

EC America, Inc.

a subsidiary of  immixGroup

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

*Period Covered by Contract: June 27, 2007 through June 26, 2022.
Pricelist current through Modification # 3177, dated December 21, 2017.*



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

SIN 132-3 LEASING OF PRODUCT

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

SIN 132-8 PURCHASE OF NEW EQUIPMENT

FSC Class 7010 System Configuration

- End User Computers/Desktop Computers
- Laptop/Portable/Notebook Computers
- Servers
- Optical and Imaging Systems

FSC Class 7025 Input/Output and Storage Devices

- Printers
- Display
- Network Equipment
- Other Communications Equipment
- Storage Devices including Magnetic Storage, Magnetic Tape Storage and Optical Storage
- Other Input/Output and Storage Devices, Not Elsewhere Classified

FSC Class 7035 ADP Support Equipment

- ADP Support Equipment

FSC Class 7042 ... Mini and Micro Computer Control Devices

- Microcomputer Control Devices

FSC Class 5805 Telephone and Telegraph Equipment

- Telephone Equipment
- Audio and Video Teleconferencing Equipment

FSC Class 5810 Communications Security Equipment and Components

- Communications Security Equipment

FPDS Code N070 Other

- Installation
- Deinstallation
- Reinstallation

NOTE: Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 132-8 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activities are required to incorporate wage rate determinations into orders, as applicable.

SIN 132-12 - EQUIPMENT MAINTENANCE

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

SIN 132-32 - TERM SOFTWARE LICENSES

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

Software maintenance as a product does **NOT** include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service – which is categorized under a difference SIN (132-34).

FSC Class 7030 Information Technology Software

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

SIN 132-33 - PERPETUAL SOFTWARE LICENSES

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

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

FSC Class 7030 Information Technology Software

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

SIN 132-34 - MAINTENANCE OF SOFTWARE AS A SERVICE

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

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

SIN 132-44 – CONTINUOUS DIAGNOSTICS AND MITIGATION (CDM) TOOLS

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

activities such as training.

SIN 132-50 - TRAINING COURSES (FPDS Code U012)

SIN 132-51 - IT PROFESSIONAL SERVICES

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

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

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

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

SIN 132-52 - ELECTRONIC COMMERCE (EC) SERVICES

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

CONTRACTOR

Contract Number:
GS-35F-0511T

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

Pricelist current through Modification # 3177, dated December 21, 2017.

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

Email:
ECA_Contracts@immixgroup.com

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

Business Size:
Other than Small Business

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CUSTOMER INFORMATION

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

SIN	Description
132-3	Leasing of Product
132-8	Purchase of New Equipment
132-12	Maintenance of Equipment, Repair Service, and Repair Parts/Spares Parts
132-32	Term Software Licenses
132-33	Perpetual Software Licenses
132-34	Maintenance of Software, as a Service
132-44	Continuous Diagnostics and Mitigation (CDM) Tools
132-50	Training Courses
132-51	IT Professional Services
132-52	Electronic Commerce (EC) Services

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

SIN	Part Number	GSA Catalog

		Price
132-8	SMA-WMG1-1Y-S12	\$0.22
132-12	SWS-AD-RFDV-001-10-1-BNS	\$0.33
132-32	DEV-B2C000-S	\$0.14
132-33	162382	\$0.01
132-34	RW1-GOLD-7400-0013-010	\$0.08
132-44	CPOS-ASG-S200-Y1-CDM	\$0.00
132-50	AFS133	\$88.14
132-51	CONL-6	\$101.16
132-52	BWU001A-W1	\$0.95

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

2. Maximum Order:

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

- Special Item Number 132-3 - Leasing of Product
- Special Item Number 132-8 - Purchase of Equipment
- Special Item Number 132-12 - Equipment Maintenance
- Special Item Number 132-32 - Term Software Licenses
- Special Item Number 132-33 - Perpetual Software Licenses
- Special Item Number 132-34 - Maintenance of Software as a Service
- Special Item Number 132-44 – Continuous Diagnostics and Mitigation (CDM) Tools
- Special Item Number 132-51 - IT Professional Services
- Special Item Number 132-52 - Electronic Commerce (EC) Services

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

- Special Item Number 132-50 - Training Courses

3. Minimum Order: \$100.00

4. Geographic coverage (delivery area):

Domestic and overseas delivery

5. Point(s) of production:

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

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

6. Discount from List Prices:

Prices shown herein are Net (discounts deducted)

7. Quantity Discount:

None unless otherwise specified in the pricelist.

8. Prompt Payment Terms:

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

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

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

10. Foreign items:

Country of Origin is identified in the Schedule Contract Pricelist.

11a. Time of Delivery:

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

11b. Expedited Delivery:

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

11c. Overnight and 2-Day Delivery:

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

11d. Urgent Requirements:

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

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

13a. Ordering address(es):

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

Or

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

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

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

14. Payment address(es):

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

Or

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

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

15. Warranty provision:

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

16. Export packing charges, if applicable:

Not Applicable

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

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

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

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

21. List of service and distribution points (if applicable):

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

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

22. List of Participating dealers (if applicable):

See Authorized Dealers Listing by Manufacturer at

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

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

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

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

25. DUNS Number: 017573259

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

27. Integration:

The Non-Disclosure provisions set forth in Section 9b.(7), the IP Infringement provisions set forth in Section 9b.(9) and the Limitation of Liability provisions set forth in Section 3c. of the Terms and Conditions Applicable to Term Software Licenses (Special Item Number 132-32), Perpetual Software Licenses (Special Item Number 132-33) and Maintenance as a Service (Special Item Number 132-34) of General Purpose Commercial Information Technology Software are hereby incorporated into and made a part of the terms applicable to all SINs.

28. Glossary of Definitions:

a. **“Contractor”** means EC America, Inc.

b. **“Contractor and its affiliates”** and **“Contractor or its affiliates”** refers to the Contractor, its chief executives,

directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

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

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

29. Responsibilities of Contractor:

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

**TERMS AND CONDITIONS APPLICABLE TO
LEASING OF GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY PRODUCTS
(SPECIAL ITEM NUMBER 132-3)**

1. GLOSSARY OF DEFINITIONS

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

2. LEASE TYPES

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

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

Orders for leased Products must specify the leasing type.

3. OPTION 1

a. STATEMENT

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

b. FUNDING AND PERIODS OF LEASING ARRANGEMENTS

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

hereunder to acquire title to the Product prior to the planned expiration date or unless the Ordering Activity exercises its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the Ordering Activity to a renewal.

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

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

c. DISCONTINUANCE AND TERMINATION

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

4. OPTION 2

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

a. LEASING PRICE LIST NOTICE:

Contractors must include the following notice in their contract price list for SIN 132-3:

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

b. STATEMENT OF ORDERING ACTIVITY INTENT:

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

c. LEASE TERM:

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

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

d. LEASE TERMINATION:

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

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

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

LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS

1. ORDERING PROCEDURES:

- a. When an Ordering Activity expresses an interest in leasing a Product(s), the Ordering Activity will provide the following information to the prospective Contractor:
 - (i) Which Product(s) is (are) required.
 - (ii) The required delivery date.
 - (iii) The proposed lease plan and term of the lease.

- (iv) Where the Product will be located.
- (v) Description of the intended use of the Product.
- (vi) Source and type of appropriations to be used.

- b. The Contractor will respond with:
 - (i) Whether the Contractor can provide the required Product.
 - (ii) The estimated residual value of the Product (Lease with Option to Own and Step Lease only).
 - (iii) The monthly payment based on the rate.
 - (iv) The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
 - (v) A confirmation of the availability of the Product on the required delivery date.
 - (vi) Extent of warranty coverage, if any, of the leased Products.
 - (vii) The length of time the quote is valid.
- c. The Ordering Activity may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the Ordering Activity does not issue a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

2. ASSIGNMENT OF CLAIMS:

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

3. PEACEFUL POSSESSION AND UNRESTRICTED USE:

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

4. COMMENCEMENT OF LEASE:

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

5. INSTALLATION AND MAINTENANCE:

- a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the Ordering Activity to obtain installation and maintenance services from a qualified source. The Ordering Activity may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The Ordering Activity may also perform installation and/or maintenance in house, if qualified

resources exist. In any event, it is the responsibility of the Ordering Activity to ensure that maintenance is in effect for the Lease term for all Products leased.

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

6. MONTHLY PAYMENTS:

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

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

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

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

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

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

7. LEASE END/DISCONTINUANCE OPTIONS:

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

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

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

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

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

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

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

8. UPGRADES AND ADDITIONS:

- a. The Ordering Activity may affix or install any accessory, addition, upgrade, product or device on the Product ("additions") provided that such additions:
 - (1) can be removed without causing material damage to the Product;
 - (2) do not reduce the value of the Product; and
 - (3) are obtained from or approved by the Contractor, and are not subject to the interest of any third-party other than the Contractor.
- b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the Ordering Activity shall remove any additions which:

(1) were not leased from the Contractor, and
(2) are readily removable without causing material damage or impairment of the intended function, use, or value of the Product, and restore the Product to its original configuration.

- c. Any additions that are not so removable will become the Contractor's property (lien free).
- d. Leases of additions and upgrades must be co-terminus with that of the Product.

9. RISK OF LOSS OR DAMAGE:

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

10. TITLE:

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

11. TAXES:

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

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

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

- b. Except for final payment and transfer of title to the Ordering Activity, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- c. The purchase conversion cost of the Product shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.
- d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the Product under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

**TERMS AND CONDITIONS APPLICABLE TO
PURCHASE OF GENERAL PURPOSE
COMMERCIAL INFORMATION TECHNOLOGY
NEW EQUIPMENT (SPECIAL ITEM NUMBER 132-
8)**

1. GLOSSARY OF DEFINITIONS

a. **"Documentation"** shall mean Manufacturer's then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.

b. **"Equipment"** shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

2. MATERIAL AND WORKMANSHIP

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

3. ORDER

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

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

4. TRANSPORTATION OF EQUIPMENT

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

5. INSTALLATION AND TECHNICAL SERVICES

a. **INSTALLATION.** When the Equipment provided under this contract is not normally self-installable, the Contractor its Manufacturer or other authorized service provider's technical personnel shall be available to the Ordering Activity, at the Ordering Activity's location, to install the Equipment and to train Ordering Activity personnel in the use and maintenance of the Equipment. The charges, for such services are listed by Manufacturer, in the schedule pricelist.

b. **OPERATING AND MAINTENANCE MANUALS.** The Contractor or its Manufacturer shall furnish the Ordering Activity with one (1) copy of all Documentation, which is normally provided with the Equipment being purchased. For Documentation only available on-line, Contractor or its Manufacturer shall provide Ordering Activity access to such Documentation.

6. INSPECTION/ACCEPTANCE

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the applicable Manufacturer's Documentation. Therefore, items delivered shall be deemed accepted upon delivery to Ordering Activity's designated receiving facility. The Ordering Activity reserves the right to inspect or test any equipment that has been delivered. The Ordering Activity may require repair or replacement of nonconforming equipment at no increase in

contract price. The Ordering Activity must exercise its post-acceptance rights (1) within the applicable warranty period as set forth below; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

7. WARRANTY

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

b. **Limitation of Liability**

i) **Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN SUBSECTION (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

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

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

c. **Inspection and repair of defective Equipment** under this warranty may be performed, at the option of the Contractor, at a service facility/plant authorized by the Contractor. The Ordering Activity may not return defective Equipment to the Contractor, the Manufacturer or its authorized service provider for repair or replacement without prior consultation and instruction.

8. PURCHASE PRICE FOR ORDERED EQUIPMENT

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

9. RESPONSIBILITIES OF THE CONTRACTOR

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

10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

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

***TERMS AND CONDITIONS APPLICABLE TO
MAINTENANCE, REPAIR SERVICE AND REPAIR
PARTS/SPARE PARTS FOR GOVERNMENT-
OWNED GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT,
RADIO/TELEPHONE EQUIPMENT, (AFTER
EXPIRATION OF GUARANTEE/WARRANTY
PROVISIONS AND/OR WHEN REQUIRED SERVICE
IS NOT COVERED BY GUARANTEE/WARRANTY
PROVISIONS) AND FOR LEASED EQUIPMENT
(SPECIAL ITEM NUMBER 132-12)***

1. GLOSSARY OF DEFINITIONS

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

2. SERVICE AREAS

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

3. MAINTENANCE ORDER

- a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.
- b. The Contractor shall honor orders for Maintenance Services for the duration of the contract period or a lesser period of time, for the Equipment shown in the schedule pricelist. Maintenance Services shall commence on a mutually agreed upon date, which will be written into the maintenance

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

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

4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

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

5. LOSS OR DAMAGE

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

6. SCOPE

- a. In exchange for the applicable fees, the Contractor, through the Manufacturer or its authorized service provider shall provide Maintenance Services for all Equipment listed herein, as requested by the Ordering Activity during the contract term. Repair service and repair parts/spare parts

shall apply exclusively to the Equipment types/models within the scope of this Information Technology Schedule.

- b. Equipment placed under Maintenance Service shall be in good operating condition.
 - (1) In order to determine that the Equipment is in good operating condition, the Equipment shall be subject to inspection by the Contractor through the Manufacturer or its authorized service provider without charge to the Ordering Activity.
 - (2) Costs of any repairs performed for the purpose of placing the Equipment in good operating condition shall be borne by the Contractor, provided the Equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
 - (3) If the Equipment was not under the Contractor's responsibility, the costs necessary to place the Equipment in proper operating condition shall be borne by the Ordering Activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).
 - (4) Contractor shall have no obligation to provide Maintenance Services for Equipment that has been modified by Ordering Activity, is in disrepair or subject to any other exclusions as set out in Manufacturer's Maintenance Services Policy.

7. RESPONSIBILITIES OF THE ORDERING ACTIVITY

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

8. RESPONSIBILITIES OF THE CONTRACTOR

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

9. MAINTENANCE RATE PROVISIONS

- a. For Equipment under monthly Maintenance Services, the Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to

keep the Equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the Ordering Activity.

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

10. REPAIR SERVICE RATE PROVISIONS

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

11. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

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

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

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

13. INVOICES AND PAYMENTS

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

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

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. GLOSSARY OF DEFINITIONS

- a. **"Documentation"** shall mean Manufacturer's then current help guides, and manuals issued by Manufacturer and made generally available by Manufacturer for the Software whether on-line or in hard copy. Documentation shall include any updated Documentation that Manufacturer provides with any updates.
- b. **"Maintenance Services"** shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer's then current Maintenance Services Policy.
- c. **"Maintenance Services Policy"** shall mean the commercial terms describing a Manufacturer's standard Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
- d. **"Software"** shall mean (i) the version of the computer program identified on the Schedule Contract Pricelist and (ii) updates to such programs.

2. INSPECTION/ACCEPTANCE

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

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Software and Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Notwithstanding anything to the contrary that may be marked on or provided with the Software or Documentation, the parties understand and agree that such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor, who will be responsible to the Ordering Activity for all compliance, service and remedies thereunder.
- b. Limitation of Liability.
 - i) Exclusion of Consequential Damages. **EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN (b)(iii) BELOW, IN NO EVENT**

SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES provided however, that in the event Ordering Activity makes unauthorized copies of the Software, Contractor shall be entitled to recover the full amount of any license fees that would relate to such copies.

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

4. TECHNICAL SERVICES

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

5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined:
 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

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

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

considered software maintenance as a service.

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

2. Software Maintenance as a Service (SIN 132-34)

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

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

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

6. PERIODS OF TERM LICENSES (SIN 132-32) AND MAINTENANCE (SIN 132-34)

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

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

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

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

8. TERM LICENSE CESSATION

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

9. UTILIZATION LIMITATIONS - (SIN 132-32, SIN 132-33, AND SIN 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
 - b. When acquired by the Ordering Activity, commercial computer Software and related Documentation shall be subject to the following:
 - (1) Title to and ownership of the Software and Documentation shall remain with the Contractor or its Manufacturer or licensors, unless otherwise specified. Contractor and its Manufacturers reserve all rights in and to the Software and Documentation not expressly granted to Ordering Activity herein.
 - (2) United States Government Legends. The Software, Documentation and any other technical data provided hereunder is commercial in nature and developed solely at private expense. The Software is delivered as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June 1995) or as a "Commercial Item" as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Manufacturer's standard commercial license for the Software. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.
- Contractor grants Ordering Activity only those utilization rights (and reserves the same utilization limitations) as specified in the applicable Manufacturer's commercial license terms, a description of which is set forth on Attachment A to this schedule pricelist and incorporated herein.
- Notwithstanding the forgoing, Contractor acknowledges and agrees that Ordering Activity shall have the minimum restricted rights as set forth in b(4) below.
- (3) Except as is provided in paragraph 8.b(2) above, the Ordering Activity shall not provide or otherwise make available the Software or Documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Ordering Activity who

have the Ordering Activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed Software and Documentation only in accordance with these restrictions. This provision does not limit the right of the Ordering activity to use Software, Documentation, or information therein, which the Ordering Activity may already have or obtains without restrictions.

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

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

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

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

- (8) **Verification.** At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements). Contractor reserves the right to audit Ordering Activity's use of the Software no more than once annually at Contractor's expense. Contractor shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hour at Ordering Activity's facilities and shall not unreasonably interfere with Ordering Activity's business.
- (9) **Intellectual Property Infringement.** If a third party makes a claim against Ordering Activity that the Software directly infringes any patent, copyright, or trademark or misappropriate any trade secret ("IP Claim"); Contractor will (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent

jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; *provided that*: (i) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (ii) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software, (b) the modification of the Software, (c) the use of the Software other than in accordance with the Documentation or this contract, or (d) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

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

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

10. SOFTWARE CONVERSIONS - (SIN 132-32 AND SIN 132-33)

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

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

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

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

12. RIGHT-TO-COPY PRICING

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

**TERMS AND CONDITIONS APPLICABLE TO
CONTINUOUS DIAGNOSTICS AND MITIGATION
(CDM) TOOLS SIN 132-44**

1. GLOSSARY OF DEFINITIONS

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

2. SCOPE

- a. Special Item Number (SIN) 132-44 Continuous Diagnostics and Mitigation (CDM) Tools is a solutions SIN. This SIN includes both Equipment and Software products and any associated services for the products to include installation, maintenance, and training.
- b. In addition to the terms and conditions of this CDM SIN: the terms and conditions of SIN 132-8 shall apply to the purchase of Equipment provided under the CDM SIN; the terms and conditions of SIN 132-12 shall apply to Equipment Maintenance Services provided under the CDM SIN; the terms and conditions of SINs 132-32, 132-33, and 132-34 shall apply to Software and Software Maintenance Services provided under the CDM SIN; and the terms and conditions of SIN 132-50 shall apply to the purchase of training courses provided under the CDM SIN.
- c. 132- 44 - Continuous Diagnostics and Mitigation Tools - SUBJECT TO COOPERATIVE PURCHASING - Includes Continuous Diagnostics and Mitigation (CDM) Approved Products List (APL) Equipment and Software products/tools and associated Services and Maintenance Services. The full complement of CDM subcategories includes tools, associated Maintenance Services, and other related activities such as training.

- d. The 5 subcategories CDM capabilities specified under this SIN are:

- 1) Manage “What is on the network?”: Identifies the existence of hardware, software, configuration characteristics and known security vulnerabilities.
- 2) Manage “Who is on the network?”: Identifies and determines the users or systems with access authorization, authenticated permissions and granted resource rights.
- 3) Manage “How is the network protected?”: Determines the user/system actions and behavior at the network boundaries and within the computing infrastructure.
- 4) Manage “What is happening on the network?”: Prepares for events/incidents, gathers data from appropriate sources; and identifies incidents through analysis of data.
- 5) Emerging Tools and Technology: Includes CDM cybersecurity tools and technology not in any other subcategory.

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

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

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

Table 1: SIN to TFA mapping

5 SIN Subcategories	15 CDM BPA TFAs
1. Manage “What is on the network?”	• TFA 1 – Hardware Asset Management • TFA 2 – Software Asset Management • TFA 3 – Configuration Settings Management • TFA 4 – Vulnerability Management
2. Manage “Who is on the network?”	• TFA 6 – Manage Trust in People Granted Access • TFA 7 – Manage Security-Related Behavior • TFA 8 – Manage Credential and Authentication • TFA 9 – Manage Account/Access/Manage Privileges
3. Manage “How is the boundary protected?” for BOUND	• TFA 5 – Manage Network Access Controls
4. Manage “What is happening on the network?” for MNGEVT	• TFA 10 – Prepare for Contingencies and Incidents • TFA 11 – Respond to Contingencies and Incidents

4. Manage "What is happening on the network?" for DBS	• TFA 12 – Design and Build in Requirements Policy and Planning • TFA 13 – Design and Build in Quality
4. Manage "What is happening on the network?" for OMI	• TFA 14 – Manage Audit Information • TFA 15 – Manage Operation Security
5. Emerging Tools and Technologies	Future innovations

(1) Manage "What is on the network?"

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

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

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

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

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

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

(2) Manage "Who is on the network?"

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

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

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

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

(3) Manage "How is the boundary protected?"

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

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

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

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

(4) Manage "What is happening on the network?"

Due to the complexity to manage "What is happening on the network?"; this area is covered by three focus areas:

- Manage Events (MNGEVT)
- Operate, Monitor and Improve (OMI)
- Design and Build in Security (DBS)

Manage Events

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

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

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

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

This CDM capability covers verification and validation of processes, policies, and procedures supporting cybersecurity preparation, audit and log data collection, security analysis of

audit/log data, incident reporting to provide forensic evidence of malicious or suspicious behavior, and ongoing assessment.

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

Operate, Monitor and Improve

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

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

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

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

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

Design and Build in Security

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

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

The U.S. government and critical infrastructure sectors are increasingly dependent on commercial products and systems,

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

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

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

(5) Emerging Tools and Technologies

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

3. STANDARDS COMPLIANCE

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

4. ORDER

- a. Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.
- b. All delivery or task orders are subject to the terms and conditions of the contract. In the event of conflict between an order and the contract, the contract will take precedence.

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

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

6. TECHNICAL SERVICES

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

7. PERFORMANCE OF SERVICES ASSOCIATED WITH PRODUCTS

- a. The Contractor shall commence performance of Services on the date agreed to by the Contractor and the Ordering Activity.
- b. The Contractor agrees to render Services during normal working hours, unless otherwise agreed to by the Contractor and the Ordering Activity.
- c. The Ordering Activity should include the criteria for satisfactory completion of each order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of the CDM Tools SIN for a specific requirement at the order level must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts. All travel will be agreed upon with the Ordering Activity prior to the Contractor's travel.

8. RESPONSIBILITIES OF THE CONTRACTOR

- a. The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of an order is custom-developed software, FAR 52.227-14 Rights in Data may apply.
- b. The Contractor shall comply with contract clause (FAR 52.204-21) for the basic safeguarding of contractor information systems that process, store, or transmit Federal contract information (as defined in the contract clause) received by the Contractor in performance of the contract.

9. INVOICES FOR SERVICES

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

10. DESCRIPTION OF PRODUCTS AND SERVICES AND PRICING

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

11. TOTAL SOLUTION

- a. Labor categories/qualifications are not included in this SIN; however, ordering activities may acquire a total solution to meet a specific requirement for an order or BPA involving multiple IT Schedule 70 SINs. Contractors report the sales to GSA under the SINs the items are sold. For example, an agency may post an RFQ requesting a total solution anticipating offerings from multiple SINs, such as IT Professional Services 132-51 or Highly Adaptive Cybersecurity Services (HACS) 132-45A-D along with CDM Tools 132-44 for products and product associated services.

**TERMS AND CONDITIONS APPLICABLE TO
PURCHASE OF TRAINING COURSES FOR
GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT
AND SOFTWARE (SPECIAL ITEM NUMBER
132-50)**

1. GLOSSARY OF DEFINITIONS

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

2. SCOPE

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

3. ORDER

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

4. TIME OF DELIVERY

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

5. CANCELLATION AND RESCHEDULING

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

6. FOLLOW-UP SUPPORT

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

7. PRICE FOR TRAINING

The price that the Ordering Activity will be charged will be the Ordering Activity training price in effect at the time of order

placement, or the Ordering Activity price in effect at the time the training course is conducted, whichever is less.

8. INVOICES AND PAYMENT

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

9. FORMAT AND CONTENT OF TRAINING

- a. The Contractor or its Manufacturer shall provide the Training Materials normally provided with course offerings. Unless stated otherwise in an applicable Manufacturer's Training Catalog, such documentation will become the property of the student upon completion of the training class, provided, however, Contractor and or its Manufacturer shall retain all right, title and interest to the intellectual property rights contained therein (e.g., copyrights) and provided further, however, that such Training Materials shall be considered the Confidential Information of Manufacturer and subject to the non-disclosure provisions set forth above in the terms applicable to SINs 132-32, 132-33 and 132-34 .
- b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Training Catalog shall provide most of the following information for each training course offered:
 - (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
 - (2) The length of the course;
 - (3) Mandatory and desirable prerequisites for student enrollment;
 - (4) The minimum and maximum number of students per class;
 - (5) The locations where the course is offered;
 - (6) Class schedules; and
 - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the Ordering Activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

10. "NO CHARGE" TRAINING

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

**TERMS AND CONDITIONS APPLICABLE TO
INFORMATION TECHNOLOGY (IT)
PROFESSIONAL SERVICES (SPECIAL ITEM
NUMBER 132-51)**

1. GLOSSARY OF DEFINITIONS

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

2. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the Ordering Activity location, as agreed to by the Contractor and the Ordering Activity.

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

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

4. ORDER

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

5. PERFORMANCE OF SERVICES

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

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

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

7. INSPECTION OF SERVICES

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS □COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I □□OCT 2008) (DEVIATION I - FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts orders placed under this contract.

8. RESPONSIBILITIES OF THE CONTRACTOR

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

9. RESPONSIBILITIES OF THE ORDERING ACTIVITY

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

10. INDEPENDENT CONTRACTOR

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

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

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

12. INVOICES

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

13. PAYMENTS

For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for services delivered. Progress payments shall be made only when authorized by the Statement of Work or task order. For time-and-materials orders, the

Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I - OCT 2008) (DEVIATION I - FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I - OCT 2008) (DEVIATION I - FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

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

14. RESUMES

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

15. INCIDENTAL SUPPORT COSTS

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

16. APPROVAL OF SUBCONTRACTS

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

17. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING

- a. A description of each type of IT Service offered under Special Item Numbers 132-51 IT Professional Services is set forth in Attachment A and/or the Schedule Contract Pricelist. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.
- b. Pricing for all IT Professional Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices, minimum general experience and minimum education.

**TERMS AND CONDITIONS APPLICABLE TO
ELECTRONIC COMMERCE (EC) (SPECIAL ITEM
NUMBER 132-52)**

1. GLOSSARY OF DEFINITIONS

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

2. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b. The Contractor, through Service Provider, shall provide services at a location, as agreed to by the Contractor and the Ordering Activity.

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

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

4. ORDER

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

5. PERFORMANCE OF SERVICES

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

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

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

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

7. INSPECTION OF SERVICES

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

8. RESPONSIBILITIES OF THE CONTRACTOR

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

this character. If the end product (i.e., deliverable) of a Statement of Work is custom developed software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

9. RESPONSIBILITIES OF THE ORDERING ACTIVITY

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

10. INDEPENDENT CONTRACTOR

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

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

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

12. INVOICES

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

13. PAYMENTS

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

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

14. INCIDENTAL SUPPORT COSTS

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

15. APPROVAL OF SUBCONTRACTS

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

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

- a. A description of each type of EC Service offered under Special Item Numbers 132-52 E-Commerce is set forth in Attachment A. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.
- b. Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.

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

PREAMBLE

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

COMMITMENT

To actively seek and partner with small businesses.

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

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

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

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

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

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

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

**SUGGESTED FORMATS FOR BLANKET
PURCHASE AGREEMENTS**

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

(Insert Customer Name)

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

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

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

Signatures

Ordering Activity Date

Contractor Date

BPA NUMBER _____

**(CUSTOMER NAME)
BLANKET PURCHASE AGREEMENT**

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

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

*SPECIAL BPA DISCOUNT/PRICE

(2) Delivery:

DESTINATION

DELIVERY SCHEDULES / DATES

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

(4) This BPA does not obligate any funds.

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

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

OFFICE

POINT OF CONTACT

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

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

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

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

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

BASIC GUIDELINES FOR USING "CONTRACTOR TEAM ARRANGEMENTS"

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

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

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

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

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

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules "Team Solution" to meet the customer's requirement.
- Customers make a best value selection.

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

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

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

Manufacturer Name	
A10 Networks, Inc.	Magnet Forensics
Adobe Systems, Inc.	Mesosphere
AINS, Inc.	Micro Focus Software
Allied Telecom Group, LLC	Mmodal
Appian Corporation	MobileIron, Inc.
Aruba Networks	Multivista Franchise Systems, LLC
Attivo Networks, Inc.	NEC Corporation of America
Authentic8	NetApp, Inc.
Avizia	NetScout Systems, Inc.
Barracuda Networks, Inc.	New Net Technologies, Inc.
Bay Dynamics, Inc.	Northrop Grumman Systems Corporation
BlueCat Networks (USA), Inc.	NowSecure
BMC Software Inc.	Nutanix
BravoSolution	OpenGov, Inc.
Brocade Communications Systems, Inc.	Palo Alto Networks, Inc.
Catbird Networks, Inc.	Phantom Cyber Corporation
Centrify Corporation	Procore Technologies, Inc.
Check Point Software Technologies, Inc.	Project Remedies, Inc.
Cirruseworks	Proofpoint, Inc.
Cisco Systems, Inc.	Prosoft Systems
Cisco WebEx, LLC	Pulse Secure
Coho Data	Puppet Labs
CommVault Systems, Inc.	Qualtrics, LLC
Cybersponse	Red Hat, Inc.
Cyviz, LLC	RedOwl Analytics, Inc.
Docker, Inc.	Riverbed Technology, Inc.
Eccentex	RSA Security
ElasticSearch Federal, Inc.	SAP NS2
Elemental Technologies	SAP Public Services, Inc.
EMC Corporation	Seceon Inc.
Enterasys Networks, Inc.	Secure Channels Inc.
Extreme Networks, Inc.	Siemens Industry, Inc.
Forcepoint LLC	SpectorSoft
Fortinet, Inc.	Sunview Software, Inc.
Fujitsu Network Communications, Inc.	Syferlock Technology Corporation
GitLab	SyncDog
Globalscape	Symantec
Guidance Software	Tanium
Gupta Technologies	Thycotic Software
HaIVision	TIBCO Software Federal, Inc.
Hewlett Packard Enterprises	Unitrends
Hirevue	Varonis Systems Inc.
Infinera Corporation	VBrick Systems, Inc.
InfoReliance Corporation	Vectra Networks, Inc.
Intercede Group	Veeam Software Corporation
Intermec Technologies Corporation	Veriato
Ivanti	Wynyard
KBZ Communications, Inc.	X1 Discovery, Inc.
Kony, Inc.	Xirrus
Litera	Yubico
Lookingglass Cyber Solutions Inc.	ZeroFox, Inc.
McAfee	

A10 Networks, Inc.
2309 Bering Drive
San Jose, CA 95131

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

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

Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

A10 NETWORKS

A10 NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

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

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

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

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

OTHER PROVISIONS OF THIS ATTACHMENT A:

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

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

prepaid, to Contractor through A10 Networks, and the RMA number must be clearly indicated on the shipping box and papers.

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

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

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

BASIC WARRANTY SERVICE PROGRAM

Coverage for A10 Networks products are described below. Additional Support coverage can be purchased with Ordering Activity's A10 Products. Please refer to the Contractor's GSA Price List for Annual Support & Services fees.
Phone Support - 90 days from date of purchase

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

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

Software Updates - 90 days from date of purchase

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

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

Advanced Hardware Replacement Service - 30 days from date of purchase

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

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

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

BASIC SUPPORT SERVICE PROGRAM

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

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

For the duration of the term purchased, phone support is offered 5 days per week between the hours of 8:30 a.m. to 5:30 p.m.,

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

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

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

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

Advanced Hardware Replacement Service – 30 days from date of purchase

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

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

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

GOLD SUPPORT SERVICE PROGRAM

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

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

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

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

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

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

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

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

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

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

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

Adobe Systems Incorporated
345 Park Avenue
San Jose, CA 95110-2704

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

ADOBE SYSTEMS, INC.

ADOBE SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Copies of Adobe's License Agreements can be found at: <http://www.adobe.com/products/eulas/> and are subject to the below Universal Amendment.

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

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

1. Applicability

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

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

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

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

under a Task Order, and (5) the License Agreement. This Amendment may only be modified upon written consent of both parties.

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

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

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

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

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

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

8. **Governing Law:** The License Agreement and this Amendment shall be governed by the laws of the United States, unless there is no applicable law of the United States which would apply, in which case the laws of the State of California shall apply. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. state, U.S. territory or district, or foreign nation are hereby deleted.

9. **Dispute Resolution and Venue:** Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes relating to the License Agreement and to this Amendment shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 601-613. GSA and Ordering Activity expressly acknowledge that Adobe shall have standing to bring such claim under the Contract Disputes Act.

10. **Termination and Performance:** Termination of the License Agreement and this Amendment shall be governed by the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 601-613, and any provisions of the License Agreement relating to termination are hereby deleted, including any provisions permitting Adobe to unilaterally terminate the License Agreement, subject to the following exceptions:

- a. Adobe is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process referenced in Section 9 above or if such remedy is otherwise available to Adobe under United States federal law.
- b. Adobe is entitled to cancel or terminate the License Agreement if one of the events identified in Section 11 below apply.

11. **Remedies:** Pursuant to 28 U.S.C. § 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted (subject to the third sentence of this Section 11). Any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement (subject to the third sentence of this Section 11). Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement or any other breach of the License Agreement shall continue to apply if an equitable remedy is available under United States

Federal Law, such as (without limitation) the Freedom of Information Act ("FOIA") under one of the exemptions to disclosure under FOIA. If the Ordering Activity breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, Adobe may terminate the License Agreement; however prior to terminating this License Agreement, Adobe shall inform the Ordering Activity of one of the breaches named above as soon as possible, and provide Ordering Activity sixty (60) days from notice to cure such breach. If the breach is not cured in sixty (60) days, the Ordering Activity may terminate the Order for convenience of the Government in accordance with FAR 52.212-4(l); however, Ordering Activity has no rights to a refund, in whole or in part of any License Fee paid if this License Agreement is terminated for such breach. Nothing in this paragraph shall prevent Adobe from filing a claim or limit Adobe's damages under the Contract Disputes Act at 41 USC §§7101-7109.

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

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

14. Public Access to Information: Adobe agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges the License Agreement and this Amendment will be available to the public, provided however, that GSA and Adobe agree that other items identified in the License Agreement (such as, without limitation, source code and other technical data) provided to the Ordering Activity is confidential and proprietary information and shall not be disclosed.

AINS, Inc.
806 W. Diamond Avenue, Suite 400
Gaithersburg, MD 20878-1415

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 - qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

AINS, Inc.

AINS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

HELP DESK POLICY

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

Section - Contact Information

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

The AINS Help Desk can be reached by:

Email: support@ains.com; or

Telephone: (301) 670-2333

Section - Help Desk Escalation Procedure

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

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

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

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

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

Section - Response Times

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

Page 1 of 2

AINS, Inc. – Help Desk Policy Rev. 4/16

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

On Site Support

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

Section - Legal Notices

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

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

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

SERVICE LEVEL AGREEMENT

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

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

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

System Availability

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

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

- a. Scheduled Downtime for Preventative Maintenance;
- b. Licensee's: (i) use of any hardware, software, or services not provided by AINS as part of its Hosted Software; (ii) use of the Hosted Software in a manner inconsistent with AINS' direction, instruction or guidance; (iii) faulty input, instructions, or arguments (such as requests to files that do not exist); (iv) actual or threatened breach of any agreement(s) between AINS and Licensee, including Licensee's excessive and unauthorized use and/or failure to pay associated fees and costs; or (v) failure, negligent or otherwise, to follow appropriate security practices;
- c. Any person gaining access to AINS' data center and/or Hosted Software by means of the Licensee's passwords, equipment, or other means of access without AINS' express written approval; or
- d. Factors outside AINS' reasonable control, including, but not limited to: (a) network or device failure external to AINS' data center, at the Licensee's site, or between AINS' data center and the Licensee's site; or bugs or defects in infrastructure software (such as operating system software, database software, and content management software).

System Stability

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

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

Redundancy, Backups, and Disaster Recovery.

- a. **Power Redundancy.** AINS utilizes battery backups and a natural gas powered generator to provide a continuous power supply to AINS' data center in case of power outages. AINS' electronic building entry system is also powered by a backup generator for continuous security.
- b. **Redundant Cloud Infrastructure.** AINS utilizes multiple Internet Service Providers ("ISP"), switches, and servers to provide for automatic failover with minimum downtime in case of any interruptions to AINS' cloud-based Hosted Software.
- c. **Backup and Recovery.** AINS utilizes mirrored databases to avoid any catastrophic data loss caused by hardware failures. AINS performs, and stores locally, daily incremental and weekly full backups of all databases. AINS also maintains a redundant disaster recovery site in a separate location and replicates all databases to that remote site every two (2) hours. Restoration of data will first be attempted from local backups to minimize downtime. AINS conducts a simulated restoration from both local and remote backups every six (6) months to test the backup procedures and quality of backup data.

Preventative Maintenance.

- a. "Preventative Maintenance" includes installation of patches, bug fixes, upgrades to the operating system, hardware, and/or firmware upgrades, and any other measures that AINS deems necessary to ensure the proper functioning and security of its data center and Hosted Software, in its sole and exclusive discretion.
- b. Licensee acknowledges that AINS shall have the exclusive right to schedule and implement Preventative Maintenance measures, including those resulting in system and application downtime, rendering the Hosted Software temporarily inaccessible ("Scheduled Downtime").
- c. AINS will make every commercially reasonable effort to perform Preventative Maintenance and Scheduled Downtime so as to minimize any Licensee impact.
- d. Updates and patches to the operating system and Hosted Software will be tested for performance and stability issues in a secure environment before they are implemented on behalf of the Licensee. Virtualized test instances are made available to the Licensee for patching, upgrades, and troubleshooting on an asneeded basis in AINS' sole and exclusive discretion.
- e. AINS will maintain a log that identifies: (i) the date and time of Preventative Maintenance; (ii) the individual performing the Preventative Maintenance; (iii) the individual who provided access to the data center and Services if other than the individual performing the Preventative Maintenance; (iv) the Preventative Maintenance performed; and (v) any equipment removed or replaced during Preventative Maintenance.

System Security

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

Licensee Obligations

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

Term, Termination, Duration

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

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

Service Credits/Remedies

AINS provides the following service credit program:

Monthly Availability	Service Credits
100%-99.9%	Customer credits AINS one (1) day service cost
99.9% to 99.5%	No service credits
Below 99.5%	AINS credits Customer for (Number of downtime hours - 3.6 hours) * one (1) day service cost

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

SERVICES AGREEMENT

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

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

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

TERMS AND CONDITIONS

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

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

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

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

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

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

2. Exclusions and Reservations

2.1 AINS shall have no obligation to, but may in its sole discretion, provide Services to Licensee regarding the following:

a) Restricted Releases of the Software; b) Any version of the Software older than the latest version made available to Licensee and the immediately preceding release, including any patches and bug fixes; c) Hardware issues; d) Issues relating to any third party software or services; e) Issues caused solely by Licensee; f) Issues relating to the Software caused in whole or in part by Licensee's breach of this Agreement and/or the Software License Agreement, including, but not limited to, unauthorized use and/or modifications of the Software; g) Issues resulting from Licensee's failure, negligent or otherwise, to implement all upgrades, updates, improvements or modifications to the Software within sixty (60) days of

release by AINS or as may otherwise be directed; h) Software that is altered, damaged, or modified, including any modification, adjustment, change, "tuning," "optimization," application programming interfaces (APIs), interfaces with any other software, or any other action that in any way alters the precise structure and/or function of the database or application files as originally delivered; and/or i) Software installed in an operating environment for which the Software has not been licensed.

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

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

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

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

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

3. **Licensee Obligations**

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

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

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

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

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

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

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

4. **Term and Termination**

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

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

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

5. **Confidentiality, Ownership, and Proprietary Information**

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

6. Warranties and Limitations on Liability

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

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

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

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

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

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

7. Independent Contractor

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

LICENSEE: _____

AINS, INC.

Signature

Signature

Authorized Representative

Authorized Representative

Date

Date

SOFTWARE LICENSE AGREEMENT

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

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

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

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

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

TERMS AND CONDITIONS

1. Definitions

- 1.1. "Additional User" shall mean Licensee's customer, vendor, agent, subcontractor, or consultant authorized to use the Software pursuant to a Licensee Third Party Contract.
- 1.2. "Agreement" shall mean this Software License Agreement, and any duly executed Purchase Orders, addenda and/or modifications attached hereto or referenced herein. "Agreement" shall also include any Services Agreement(s) between Company and Licensee that are subject to this Software License Agreement, where such Services Agreement is silent as to the term and/or condition set forth in this Agreement, including, but not limited to, those relating to ownership, confidentiality, proprietary information, limitations of liability, warranties, and remedies. "Agreement" shall also include the underlying GSA Schedule contract and Schedule Pricelist.
- 1.3. "Company Licensors" shall mean third parties from whom Company has licensed Software.
- 1.4. "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities or the maximum allowed by law), contract, voting trust, or otherwise.
- 1.5. "CPU" shall mean a processing unit utilized in Server or computer configurations.
- 1.6. "Developments" shall mean any ideas, know-how, or techniques (including any derivative works and modifications made to the Software or Documentation), which are developed by Company in the course of providing Services to Licensee.
- 1.7. "Documentation" shall mean the user manuals, policies, and guidelines relating to the use of the Software delivered by Company to Licensee in printed or electronic form.
- 1.8. "Licensee" shall mean the entity defined above, and shall include any affiliated entity which Controls, is Controlled by, or is under common Control with Licensee, provided all such entities ordering, installing, or using Software licensed under this Agreement have agreed to be bound by the terms and conditions of this Agreement.
- 1.9. "Licensee Third Party Contract" shall mean a validly executed contract between Licensee and an Additional User permitting the Additional User to use the Software.

- 1.10. "Platform Transfer" shall mean an operating environment supported by Company, which is different than the operating environment for which Software was originally licensed.
- 1.11. "Purchase Order" shall mean a valid purchase order between Company and Licensee describing the Software and/or Services purchased by Licensee, and any additional terms and conditions applicable thereto.
- 1.12. "Restricted Release" shall mean any version of the Software marked alpha, beta, or which is otherwise designated as a restricted release.
- 1.13. "SaaS" shall mean Company-hosted Software as a Service.
- 1.14. "Seat" shall mean a user designated by Licensee who is authorized to use the applicable Software licensed hereunder.
- 1.15. "Server" shall mean a device which includes one or more CPUs and enables or permits other computers electronically-linked to it to access data and software.
- 1.16. "Services" shall mean professional services provided by Company, including Software Maintenance as a Product, Software Maintenance as a Service, and Support Services.
- 1.17. "Software" shall mean a machine executable copy of the object code of the software products and applications licensed by Company to Licensee under this Agreement, including all third-party software under license embedded therein, updates, bug fixes and patches.
- 1.18. "User" shall mean any person having authorized access to the application, regardless of skill level, nature of use, or position/job title (e.g., system administrator), to include both routine use and software/system administration.

2 License

- 2.1. Subject to the terms and conditions of this Agreement and Company's acceptance of a Purchase Order, Company grants Licensee a limited, personal, non-exclusive, and non-transferable license to use the Software. All Software-related materials, in whatever form, including, but not limited to Documentation, instructions, programs, charts, manuals, and code are also furnished to Licensee only under a personal non-exclusive, nontransferable license.
- 2.2. The Software and Documentation and all licensed materials may only be used in accordance with the appropriate policies and procedures, as defined in the Documentation (including but not limited to the installation, system, and user manuals), and applicable laws and government regulations. Licensee may use the Software, Documentation and other licensed materials solely for Licensee's internal purposes.
- 2.3. The license granted hereunder is limited to the maximum number of Seats, Users, Servers, or CPUs specified in the Purchase Order ("Maximum Usage"). Licensee shall implement reasonable controls to ensure that it does not exceed the Maximum Usage. Company reserves the right to include and employ means within the Software to limit and/or monitor Licensee to the Maximum Usage. Licensee shall at all times remain responsible for Users' compliance with this Agreement.
- 2.4. Company reserves the right to audit, at its expense, Licensee's deployment and use of the Software for compliance with the terms of this Agreement and in accordance with the Licensee's security requirements at any mutually agreeable time during Licensee's normal business hours, and subject to applicable Government security requirements. If Licensee's use of the Software is found to be greater than contracted for, Licensee will be invoiced for the additional Seats, Users, Servers, or CPUs and the unpaid license fees shall be payable in accordance with FAR 52.212-4(i).
- 2.5. For on-premises installation, Company shall provide Licensee with one (1) machine executable copy of the Software and Documentation. Licensee may make a backup copy of the Software and copies of the Documentation solely for Licensee's internal use. Licensee must be a current Services subscriber to receive a new machine executable copy of the Software in the event one is required by a Platform Transfer by Licensee.
- 2.6. Unless otherwise agreed-to in advance, the use of Application Programming Interfaces ("APIs"), macros, and/or user interfaces not supported by Company that interfere with the Software and/or its data in any respect shall be deemed an unauthorized modification of the Software and are prohibited by this Agreement.
- 2.7. Licensee shall not permit an Additional User to use the Software without authorization from Company. Licensee, when authorized to permit such use, may do so either by allocating a portion or all of Licensee's current license to the Additional User(s) up to the Maximum Usage, or by purchasing additional licenses, provided:

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

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

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

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

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

3. License Exclusions

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

- (a) unauthorized access to or use of the Software;
- (b) copying or modification of the Software or Documentation;
- (c) reverse engineering, recompilation, translation, disassembly, or discovery of the source code of all or any portion of the Software;
- (d) removal, minimization, blocking, or modification of or to any logos, trademarks, copyright notices, proprietary information notices, digital watermarks, or other notices of Company or its suppliers that are affixed to or included in the Software or Documentation;
- (e) use of the Software for any illegal purpose or any purpose deemed by Company in its sole discretion to be offensive or otherwise harmful;
- (f) distribution, disclosure, marketing, rental, lending, leasing, sale, resale, or transfer of the Software or the Documentation to any third party or Company competitor, or use of the Software for any dial-up, remote access, interactive, or other on-line service except as specifically provided and licensed as an integral part of the Software;
- (g) disclosure of the results of Software performance benchmarks to any third party without Company's prior written consent; or
- (h) export of the Software in violation of UN embargoes or US laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

4. Purchasing, Fees and Payment

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

- (a) The number of Seats, Users, Servers, or CPUs to be licensed, and the Maximum Usage;
- (b) The cost per Seat, User, Server or CPU to be licensed; and
- (c) Whether the Software will be licensed on a SaaS basis or installed on-premises.

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

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

5. Proprietary Rights, Trademarks, and Publicity

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

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

5.3. Except as otherwise expressly granted in this Agreement, no license, right, or interest in or to any Company trademark, copyright, trade name, or service mark is granted hereunder. The Company name and logo and the product

names associated with the Software are trademarks of Company or third parties, and no right or license is granted to use them.

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

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

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

6. Defense and Indemnification

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

- (a) Licensee notifies Company in writing within thirty (30) days of the claim;
- (b) To the extent allowed by 28 U.S.C. 516, Company has control of the defense and all related settlement negotiations; and
- (c) Licensee provides Company with the assistance, information, and authority necessary to perform the above. Reasonable expenses incurred by Licensee in providing such assistance may be reimbursed by Company.

6.2.

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

- (a) Any use of the Software not in accordance with this Agreement or for purposes not intended by Company;
- (b) Use of a superseded or modified release of the Software, except for such alteration(s) or modification(s) which have been made by Company or under Company's direction, if such infringement would have been avoided by the use of a current unaltered release of the Software that Company provided or would have provided to Licensee at no additional charge beyond applicable service fees; and/or
- (c) The combination, operation, or use of any Software furnished under this Agreement with programs, data, products or hardware not furnished by Company, if such infringement would have been avoided by the use of the Software without such items.

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

- (a) modify the Software to be non-infringing;
- (b) obtain for Licensee a license to continue using the Software;
- (c) substitute the Software with other software reasonably suitable to Licensee; or
- (d) if, in Company's opinion, none of the foregoing remedies are commercially feasible or practicable, terminate the license for the infringing Software and refund any prepaid license fees covering the remainder of the license term for that Software after the effective date of termination.

6.5 THIS SECTION 6 STATES COMPANY'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

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

7. Warranties

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

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

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

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

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

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

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

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

8. Limitations and Disclaimers of Liability

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

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

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

9. Confidentiality

9.1. "Confidential Information" is defined as any and all information that the disclosing Party considers to be confidential, proprietary, non-public business information or a trade secret, in any form whatsoever, including, but not limited to, discoveries, concepts and ideas, regarding: (i) Product or service information, including designs and specifications,

development plans, patent applications, and strategy; (ii) Marketing information, including lists of potential or existing customers or suppliers, marketing plans, and surveys; (iii) Computer software, including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers, and assemblers; (iv) Financial information, including sales, and revenue information; and (v) Any other information identified as Confidential by either Party.

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

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

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

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

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

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

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

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

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

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

10. Maintenance and Support Services

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

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

11. Security, Back Up, and Recovery for SaaS/Hosted Licenses

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

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

12. Restricted Release

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

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

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

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

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

13. Notices

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

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

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

14. Governing Law

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

15. Term and Termination

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

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

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

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

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

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

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

16. General

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

16.2. For purchases made against Company's General Services Administration (GSA) Schedule, the terms and conditions of Company's GSA Schedule or Purchase Order(s) shall control in the event of a conflict between such terms and conditions and those contained herein (Company's GSA Schedule is available at https://www.gsaadvantage.gov/ref_text/GS35F4747G/0OQCDU.37HKQI_GS35F4747G_GS-35F-4747G-4-21-2015-275778.PDF).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LICENSEE: _____

COMPANY: AINS, Inc.

Signature

Signature

Name

Name

Title

Title

Date

Date

Allied Telecom Group, LLC
1120 20th Street, NW, Suite 500S
Washington, DC 20036

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ALLIED TELECOM GROUP, LLC

ALLIED TELECOM GROUP, LLC LICENSE, WARRANTY AND SUPPORT TERMS

- 1. Service Delivery & Acceptance** - Prior to delivering Service to Ordering Activity, Contractor through ALLIED will perform test procedures to ensure that the Service conforms to the applicable technical specifications. Contractor through ALLIED shall notify Ordering Activity when the Service has been successfully installed and is available for Ordering Activity's use ("In-Service Date"). If ALLIED makes the Service available to the Ordering Activity, but, Ordering Activity for whatever reason is not ready to accept and use the Service, billing for the installed Service shall nonetheless commence on the In-Service Date. This applies to circumstances including, but not limited to, if Ordering Activity does not have its own equipment in place to begin using the Service. Any use of a Service, other than for verification and acceptance testing, shall constitute immediate acceptance of the Service without the formality of executing an Acceptance Notice.
- 2. Required Maintenance** – Contractor through ALLIED reserves the right to perform maintenance on or upgrade its network, its infrastructure, its service and its equipment without prior notice or liability. Such action may cause a partial or full disruption of the Service. However, and subject to ALLIED's business needs, Contractor through ALLIED will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Ordering Activity's use of the Service.
- 3. Ordering Activity Responsibilities** - Ordering Activity is responsible for all internal wiring, Ordering Activity equipment (e.g. Ordering Activity phones, handsets, computers), installation of hardware on Ordering Activity equipment, and arrangement of access rights for ALLIED including space for cables, conduits, and equipment as necessary for ALLIED-authorized personnel to install, repair, inspect, maintain, replace, or remove any and all facilities and equipment provided by ALLIED. Upon request by ALLIED, Ordering Activity will work directly with their building owner or property management firm and ALLIED, to secure a Building Access Agreement (BAA). Ordering Activity shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for equipment. Ordering Activity is responsible for ensuring that Ordering Activity's equipment is compatible for the Services and with the ALLIED network.
- 4. Acceptable Use** – Service may only be used for lawful purposes. Unauthorized transmission or storage of any information, data, or material in violation of any federal, state or local regulation or law is prohibited. This includes but is not limited to: copyrighted material, material which has been legally judged threatening or obscene or material protected by trade secret.
- 5. Disclaimer of Warranty; Limitation of Liability** – ALLIED exercises no control whatsoever over the content of the information passing through its network. ALLIED makes no warranty of merchantability or fitness for a particular purpose. ALLIED will not be responsible for any damages suffered by Ordering Activity or any other party (including any users of any Service provided or granted by Ordering Activity), including loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions caused by Ordering Activity's own negligence or Ordering Activity errors or omissions. Use of any information obtained via ALLIED is at Ordering Activity's own risk. ALLIED specifically denies any responsibility for the accuracy or quality of information obtained through its Service.
- 6. Performance** - If connection performance falls below levels expected by the Ordering Activity and these performance deficiencies are related to issues under ALLIED's control, Ordering Activity shall promptly notify ALLIED's Operation Center at support@alliedtelecom.net regarding the nature of the problem. Contractor through ALLIED will then have up to fifteen (15) days to remedy the problem. If ALLIED is unable to remedy the problem, Ordering Activity may terminate the SA without further liability and any unapplied payments for the remaining contract term will be refunded.
- 7. Warranties** - ALLIED does not warrant that its Service will be uninterrupted or error free, nor does ALLIED in any way warrant that the areas accessed or information downloaded by the Ordering Activity will be free of errors, defects or viruses which may interrupt, corrupt, delete or render unusable the Ordering Activity's files or system(s). ALLIED will not be responsible for any damages Ordering Activity suffers. This includes, but is not limited to, loss of data resulting from delays, non-deliveries, mis-deliveries, or service

interruptions caused by Ordering Activity's own negligence or Ordering Activity errors or omissions, or due to inadvertent release or disclosure of information sent by or to Ordering Activity.

8. Equipment

- a. Equipment used in data services, including internet services, is defined as Data Equipment. Unless otherwise specified in writing, all Data Equipment supplied to Ordering Activity by ALLIED remains the property of ALLIED. Upon discontinuance or termination of Services, all Data Equipment must be returned to ALLIED within ten (10) days of the final day of Service to avoid replacement cost at current market price.
- b. Voice over Internet Protocol (VoIP) refers to a technology that enables the use of the internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology. Equipment used in VoIP, including but not limited to any and all end user devices and equipment, is defined as Phone Equipment. Faulty and/or defective Phone Equipment may be returned within thirty (30) days from the purchase or ship date. Returned Phone Equipment may not be deemed as returnable if a determination has been made by Allied that the equipment is ineligible for return (e.g., physical damage, not in substantially the same condition as when it was delivered and received). In addition, if this SA is terminated for any reason, such termination is Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.) Customer's termination liability shall include any amounts due on the Phone Equipment which remains due to ALLIED. For equipment on an amortized payment plan, ALLIED reserves the right to include in the termination liability a processing fee.

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

- a. **Letter of Agency** - The Letter of Agency executed in connection with this Attachment A shall be valid during the term of this Attachment A for all telephone lines purchased hereunder. Ordering Activity may purchase additional telephone lines under this Attachment A for the Service location(s) or additional location(s) at pricing provided in Contractor's Schedule Contract.
- b. **Toll Fraud** - Ordering Activity is responsible for ensuring that the Ordering Activity Premises Equipment (CPE) such as a PBX Key System or other multiline telephone system, provisioned on the Ordering Activity's network is protected from fraudulent or unauthorized access. The Ordering Activity is responsible for payment of all charges on Ordering Activity's monthly billing statement, including any charges resulting from fraudulent or unauthorized access to any CPE. Ordering Activity agrees to notify ALLIED promptly if it becomes aware of any fraudulent or unauthorized use of its account, Service, or equipment. ALLIED shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Ordering Activity's account and the payment of all charges to Ordering Activity's account shall be and remain the responsibility of Ordering Activity.

Appian Corporation
1875 Explorer Street, 4th Floor
Reston, VA 20190

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has

not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

APPIAN CORPORATION

APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

1. **DEFINITIONS:** The terms in this Section 1 and any other capitalized terms defined in the other sections of this Agreement have the meanings stated.
 - a. "Agreement" means these Attachment A terms and conditions and the attached schedules.
 - b. "Appian" means Appian Corporation.
 - c. "Appian Software" means an object code version of the software application, the Documentation and all updates, new versions, enhancements and corrections to the Appian Software received by Ordering Activity under this Agreement.
 - d. "Contractor" means EC America, Inc.
 - e. "Correction" means, without limitation, workarounds, support releases, component replacements, patches and/or Documentation changes, as Appian deems reasonably appropriate.
 - f. "Ordering Activity" means Ordering Activity identified in the applicable Order who receives a licenses and/or services under this Agreement.
 - g. "Ordering Activity Computers" means the stand alone or file server computers owned by and under Ordering Activity's exclusive control.
 - h. "Documentation" means the specifications, use case scenarios and instructions for the proper use of the Appian Software provided under the documentation section of the Appian Forum website, <https://forum.appian.com> or other URL as notified to Ordering Activity in writing from time to time and provided for informational purposes only. .
 - i. "Maintenance Services" is as defined in Section A(3) below.
 - j. "Named User" means an employee, subcontractor or consultant of Ordering Activity, who (i) is compliant with the terms herein, and (ii) has an active user account in the Appian Software allowing him/her to authenticate into the Appian Software.
 - k. "Order" means a purchase order from Ordering Activity.
 - l. "Party" means, individually, Ordering Activity or Contractor, and "Parties" means Ordering Activity and Contractor, collectively.
 - m. "Release" means a new version of the Appian Software identified by a decimal point move in the version number in the tenths place (e.g. 5.1 to 5.2). In the event of a full integer move in the version number (e.g. 5.7 to 6.0), the new integer number (6.0) will be considered the current Release.
 - n. "Training" is as defined in Section A(5) of this Agreement.
2. **SOFTWARE LICENSE GRANT:**
 - a. General. Subject to Ordering Activity's compliance with the terms herein and payment of a corresponding sublicense fee, the Contractor through Appian grants Ordering Activity a personal, non-transferable, non-exclusive license, without right of

sublicense, to allow certain access and use of the Appian Software, as more particularly described in this Agreement and in the applicable Order. Except as expressly set forth herein, Ordering Activity may only install the Appian Software on Ordering Activity Computers.

- b. License Administrator. The Ordering Activity employee listed in the applicable Order (the "License Administrator") is responsible for configuring the Appian Software to authorize Named Users to access and use the Appian Software. Ordering Activity may change its License Administrator to another Ordering Activity employee, provided one of Ordering Activity's Maintenance Services contacts, as defined in Section A(3)(b) of this Agreement first submits the name of Ordering Activity's new License Administrator to Appian's online technical support case management system.
- c. Copies of the Appian Software. Ordering Activity may make a reasonable number of copies of the Appian Software as necessary for Ordering Activity to use the licenses purchased under this Agreement, subject to the restrictions of FAR 52.227-19, Commercial Software. All proprietary and restricted rights notices shall be reproduced on such copies, and all copies are subject to this Agreement.
- d. Third Party Hosting. Ordering Activity may operate the Appian Software at a third party co-location facility, provided Ordering Activity: (i) notifies Contractor through Appian of the address and name of the entity operating the co-location facility ("Hosting Entity"), (ii) authorizes Contractor through Appian to share the name and address of the Hosting Entity with Appian's licensors, and (iii) Ordering Activity and the Hosting Entity enter into a written agreement in which the Hosting Entity agrees: (I) to store and/or load the Appian Software only on computers and media that are reasonably secure from unauthorized access, (II) only to operate the Appian Software to make it available to Ordering Activity over the Internet or other transmission medium and not for any other purpose, and (III) not to attempt to reverse engineer, disassemble, decompile or otherwise attempt to derive the source code from the Appian Software.
- e. License Keys. Ordering Activity must provide Contractor through Appian with the following information for every Ordering Activity Computer and, if applicable, for every computer used by a Hosting Entity, to operate the Appian Software: (i) a fully qualified domain name (FQDN) owned by Ordering Activity, (ii) the operating system, and (iii) the number of CPUs. A CPU is a single central processing unit, and each core of a multi-core processing unit shall equal one CPU. Contractor through Appian will use this information to develop a license key and/or enabling code ("License Key") that will allow the Appian Software to operate only on Ordering Activity Computers having a matching domain name, operating system and CPU cores. The License Key will allow Ordering Activity to use the Appian Software up to the number and type of licenses purchased.
- f. Deleted.
- g. Restrictions.
 - (i) General. Ordering Activity may not reverse engineer, decompile (or otherwise attempt to access or determine the source code of the Software). In addition, except as expressly set forth in this Agreement, Ordering activity may not, modify, adapt or prepare any derivative works from the Appian Software, or any part thereof, nor allow, permit or assist any third party to do any of the foregoing (except to the extent any of the foregoing are permitted by the licensing terms governing use of any open sourced components included with the Appian Software). Ordering Activity agrees not to modify or tamper with the License Key or to attempt to manipulate the number of licenses counted by the License Key. In addition, Ordering Activity may not: (I) re-distribute or sublicense the Appian Software, or any part thereof, to any third party, (II) create Internet "links" to the Appian Software or "frame" or "mirror" any content available on the Appian Software on any other server or wireless Internet-based device, (III) operate the Appian Software on a service bureau basis, or (IV) allow, assist or permit any third party to do any of the foregoing.
 - (ii) Permitted Usage. Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to the terms and conditions of this Agreement. Ordering Activity acknowledges that the Appian Software is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Appian Software or the failure of the Appian Software, could lead to death, personal injury, or severe physical or environmental damage. Ordering Activity agrees not to use the Appian Software for any such purpose.
 - (iii) Named User Accounts. Only the identified individual associated with a particular Named User account can access the Appian Software, or the data therein, using that account. Without limiting the generality of the foregoing, this means that Named User accounts may not be: (I) shared amongst individuals or (II) used to provide access to the Appian Software, or the data therein, to individuals who are not the individual associated with the corresponding Named User account. In addition, Ordering Activity may not activate and de-activate Named User accounts on a daily or other regular basis in order to circumvent the restrictions set forth herein. Named User licenses may be reassigned from time to time to new users who are replacing former users who have terminated employment or who have otherwise changed job status or function and no longer use the Appian Software
 - (iv) Use by Named Users. Ordering Activity shall limit access to the Appian Software to its Named Users (a) who have a need to know the Appian Software in the normal course of their duties with Ordering Activity, and (b) who are subject

to binding confidentiality obligations with the Ordering Activity. Ordering Activity is responsible for ensuring that any Named User complies with this Agreement.

- (v) **Open Source Code.** Ordering Activity may not, and will not authorize any third party to use, any Open Source Software in connection with the Appian Software in any manner that requires, pursuant to the license applicable to such Open Source Software, that the Appian Software be (I) disclosed or distributed in source code form, (II) made available free of charge to recipients, or (III) modifiable without restriction by recipients. For the purposes hereof, "Open Source Software" means any software which is subject to any of the following license terms: (A) prohibition on imposing restrictions on distribution of the software or any derivatives thereof or prohibition on imposing restrictions on aggregation with any other software; (B) prohibition on requiring royalties, fees or charges for the software or any derivatives thereof; (C) requirement to include and/or allow distribution of the software or any derivatives thereof in source code; or (D) requirement to grant users or licensees the right to access any source code of the software or any derivatives thereof.
- (vi) **Use by Standard/Term Named Users.** A Standard/Term Named User license allows a specific Named User to access the Appian Software an unlimited number of times during the term specified in the Order. The term shall commence as of the date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Standard/Term Named Users listed in the corresponding Order to use the Appian Software in accordance with this Agreement, and (II) associated standard Maintenance Services.
- (vi) **Use by Fractional Named Users.** A Fractional Named User license allows a specific Named User to access and use the Appian Software for up to one hundred (100) Sessions per year, in perpetuity. A Named User receiving a Fractional Named User license is referred to as a Fractional Named User. A Session is counted each time a Fractional Named User (I) authenticates into any one (1) copy of the Appian Software for two (2) hours or less, and (II) for each additional two (2) hour period, or part thereof, a Fractional Named User has access to the Appian Software after the initial two (2) hours following authentication. A Fractional Named User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one Session will be counted if a Fractional User authenticates into the Appian Software multiple times within two hours of the initial authentication. The number of Sessions shall be calculated on an annual basis, with the first year commencing upon the effective date of the corresponding Order, and with each subsequent one year period commencing upon the then current anniversary of the effective date of the corresponding Order. New orders for Fractional Named User licenses will not be accepted.
- (vii) **Use by Fractional/Term Named Users.** A Fractional/Term Named User license allows a specific Named User to access and use the Appian Software for up to one hundred (100) Sessions per year during the term described in the applicable Order. The term shall commence as of the effective date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Fractional/Term Named Users purchased in the applicable Order to use the Appian Software in accordance with the Agreement, and (II) associated standard Maintenance Services. A Session is counted each time a Fractional/Term Named User authenticates into any one (1) copy of the Appian Software. An additional Session will be counted for each additional two (2) hour period, or part thereof, a Fractional/Term Named User has access to the Appian Software after the initial two (2) hours following authentication. A Fractional/Term Named User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one Session will be counted if a Fractional User authenticates into the Appian Software multiple times within two hours of the initial authentication. The number of Sessions shall be calculated on an annual basis, with the first year commencing upon the effective date of the corresponding Order, and with each subsequent one year period commencing upon the then current anniversary of the effective date of the corresponding Order. Fractional/Term Named User license are only available for renewal to existing orders. New orders for Fractional/Term Named User license will not be accepted. In the event that purchase of Fractional/Term Named User licenses is lapsed or discontinued, reinstatement will not be permitted.
- (viii) **Use of External Log-ons.** An External Log-on entitles an End User to access the Appian Software for up to two (hours) at any time following the one (1) year period after its purchase. External Log-ons not used during the corresponding one (1) year term expire. External Log-ons must be renewed or cancelled in the same quantity as the initial External Log-on purchase, unless otherwise agreed to by Contractor and Ordering Activity in writing. An External Log-on is counted each time an End User (I) authenticates into any one (1) copy of the Appian Software for two (2) hours or less, and (II) for each additional two (2) hour period, or part thereof, an End User has access to the Appian Software after the initial two (2) hours following authentication. An End User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one External Log-on session will be counted if a particular End User authenticates into the Appian Software multiple times within two hours of the initial authentication. For the purposes of this paragraph, an "End User" is a third party who is not an Ordering Activity employee, contractor, or subcontractor. External Log-ons are non-transferable, non-sublicensable, and non-exclusive. An End User may only access the Appian Software made available by Ordering Activity over the Internet via a password and username. Prior to accessing the Appian Software, an End User must first accept binding and written legal terms and conditions with Ordering Activity which: (A) contain terms which are the same or substantially similar to those set forth herein, and (B) do not contain any other terms that would have the effect of overriding, contradicting or diluting the effect of the terms set forth herein. Contractor will not refund any External Log-on license fee to the extent the corresponding External Log-ons are not used prior to the end of the applicable

license term. Ordering Activity must purchase a separate set of External Log-ons for each copy of the Appian Software that Ordering Activity uses to make the Appian Software available to End Users.

- (ix) **Use of Internal Log-ons.** An Internal Log-on entitles a specific Named User to access the Appian Software for up to two (2) hours at any time following the one (1) year period after its purchase. Internal Log-ons not used during the corresponding one (1) year term expire. Internal Log-ons must be renewed or cancelled in the same quantity as the initial Internal Log-on purchase unless otherwise agreed to by Contractor and Ordering Activity in writing. An Internal Log-on is counted each time a Named User (a) authenticates into any one (1) copy of the Appian Software for two (2) hours or less, and (b) for each additional two (2) hour period, or part thereof, the Named User has access to the Appian Software after the initial two (2) hours following authentication. A Named User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one Internal Log-on session will be counted if a particular Named User authenticates into the Appian Software multiple times within two hours of the initial authentication. Contractor will not refund any Internal Log-on license fee to the extent the corresponding Internal Log-ons are not used prior to the end of the applicable license term. Ordering Activity must purchase a separate set of Internal Log-ons for each copy of the Appian Software that Ordering Activity makes available to Named Users on a Log-on basis. Internal Log-Ons are only available for renewal to existing orders. New orders for Internal Log-Ons will not be accepted. In the event that purchase of Internal Log-Ons is lapsed or discontinued, reinstatement will not be permitted.
- (x) **Use of Cloud Add On.** If the Ordering Activity has already purchased On-premise or Cloud licenses in an Order, the Ordering Activity may purchase under a separate order an Add On Edition, which allows the number full/fractional users purchased in the applicable Order to use the Appian Software provided over the Internet, subject to the Cloud Subscription License terms described in Section B of this Agreement. Add On is limited to Non Production use only.
- (xi) **Licensors.** The Appian Software contains software licensed to Contractor from certain third party licensors ("Third Party Licensors"). Any warranty provided in connection with the Appian Software, if any, is from Contractor, not the Third Party Licensors, and the Third Party Licensors make no warranty to Ordering Activity in connection with the Appian Software, including the implied warranties of merchantability or fitness for a particular purpose. To the extent permitted under applicable law, the Third Party Licensors are not liable for any damages of any kind resulting from Ordering Activity's use of the Appian Software, including without limitation, direct, indirect, consequential, incidental, and special damages.
- (xii) **Rights and Obligations upon Termination.** Upon the termination of Ordering Activity's license, Ordering Activity must cease using the Appian Software and the Appian Community Website. Within five (5) business days after such termination, Ordering Activity must return to Contractor all originals and all copies of the Appian Software in Ordering Activity's care, custody or control. Ordering Activity will certify to Contractor that it has complied with the foregoing requirements. The foregoing obligations apply to copies of the Appian Software in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or combined with other materials.
- (xiii) **Usage.** If Ordering Activity's use of the Appian Software is found to be greater than that contracted for, Ordering Activity shall pay Contractor the additional amounts due based upon Contractor's then current contract price for the Appian Software under the applicable Order.
- h. **Intellectual Property Rights.** The Appian Software is Commercial computer software provided pursuant to FAR 52.227-19. This includes all software minor modifications of a type typically delivered to commercial customers (enhancements). Any non software deliverables provided under this Agreement containing Appian's copyrighted material is provided as Limited rights data specified in FAR 52.227-14. The Appian Software and other Appian copyright material provided under this Agreement is licensed to the Ordering Activity, not sold. All rights in the Appian Software or other Appian copyrighted material not provided to Ordering Activity under this Agreement are expressly retained by Appian and its licensors.

3. MAINTENANCE AND SUPPORT SERVICES:

Subject to the terms and conditions of this Agreement, including without limitation Ordering Activity paying the Contractor the required Maintenance Services fee, Contractor shall make available to Ordering Activity the services described in this Section 3 (the "Maintenance Services") during the period set forth in the applicable Order. Additional terms associated with the Ordering Activity's purchase of Maintenance Services is contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

- a. **Defect Correction.** When Ordering Activity reports a suspected Defect in the Appian Software to Contractor through Appian, Appian shall attempt to recreate the suspected Defect based upon information provided by Ordering Activity. If the Defect is confirmed, commercially reasonable efforts will be utilized to provide Ordering Activity with a Correction. For the purpose herein, a "Defect" is a failure of the Appian Software used by Ordering Activity to operate substantially in accordance with the then current Documentation. To the extent Ordering Activity purchases Maintenance Services in connection with an on premise license to the Appian Software, Contractor through Appian is responsible for correcting Defects in only the most recent Release of the Appian Software; provided however, that Contractor through Appian shall continue supporting the immediately preceding Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Release. To the extent Ordering Activity purchases a cloud subscription license to the Appian Software, Contractor through Appian is responsible for correcting Defects in only the version of the Appian Software made

available by Appian on the hosted environment. Ordering Activity must implement all Corrections within a reasonable time of receipt.

- b. **Technical Support.** Contractor through Appian shall provide Technical Support to allow Ordering Activity's Maintenance Services contacts to report problems and to seek assistance regarding the Ordering Activity's use of the Appian Software. Ordering Activity shall designate up to two (2) Ordering Activity employees to coordinate Ordering Activity's requests for Maintenance Services ("Maintenance Services contacts"). Ordering Activity's Maintenance Services contacts may report problems using Appian's online technical support case management system (<https://forum.appian.com/support/> or other URL as notified to Ordering Activity in writing from time to time), by telephone using Appian's authorized technical support phone line, (703) 442-1066 (or such other number that Appian may provide to Ordering Activity from time-to-time), or using any other means that Appian may authorize from time-to-time. Contractor through Appian shall return support requests within a commercially reasonable time after receipt. Ordering Activity's Maintenance Services contacts may track Technical Support requests using Appian's case management system. To the extent Ordering Activity purchases Maintenance Services in connection with an on premise license to the Appian Software, Technical Support is provided on the two (2) most recent Releases, provided, however, that Contractor through Appian shall continue supporting the third most recent Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Releases. To the extent Ordering Activity purchases a cloud subscription license to the Appian Software, Contractor through Appian is responsible for correcting Defects in only the version of the Appian Software made available by Appian on the hosted environment. Technical Support is available 8:00 a.m. to 8:00 p.m. (ET), Monday through Friday, excluding Appian holidays. Ordering Activity shall email support@appian.com (or address as notified to Ordering Activity in writing from time to time) with Ordering Activity's Maintenance Services contacts promptly on or after the effective date of the applicable Order Form. Ordering Activity may change its Maintenance Services contacts using Appian's case management system.
- c. **Updates.** Contractor through Appian will promptly make available to Ordering Activity all updates, enhancements and corrections to the Appian Software generally released by Appian to its other licensees who have purchased maintenance services for the Appian Software, including all relevant documentation ("Maintenance Releases"). Neither Contractor nor Appian is obligated to provide installation, implementation or testing services in connection with the Maintenance Releases. Maintenance Releases are part of the Appian Software and subject to this Agreement. Contractor through Appian is not obligated to release a Maintenance Release during any particular Maintenance Services term.
- d. **Appian Community Website.** Contractor through Appian shall provide Ordering Activity with reasonable access to appropriate areas of Appian's community website, currently named Appian Forum and located at <https://forum.appian.com>. This website provides Ordering Activity with access to the Appian Software, Maintenance Releases, online discussion forums and Documentation.
- e. **Premium Support.** If Ordering Activity purchases premium Maintenance Services in connection with its on premise licenses, in addition to the Defect Correction, Technical Support, Updates and the Appian Community Website described above, Contractor through Appian shall provide Ordering Activity with the additional services described below. Only standard Maintenance Services are provided in connection Cloud subscription licenses.
 - (i) **Extended Support for Priority 1 Issues.** Contractor through Appian shall provide Ordering Activity with Technical Support, 24x7, 365 days per year in connection with Priority 1 Issues. A Priority 1 issue occurs when the Appian Software is down in a production setting and no workaround exists, or the workaround is not feasible to implement due to the impact on Ordering Activity's business. Contractor through Appian shall respond by telephone to Ordering Activity's request for Technical Support in connection with a Priority 1 issue within one (1) hour of receipt.
 - (ii) **Additional Maintenance Services contacts.** Ordering Activity may designate an additional two (2) Maintenance Services contacts (for a total of four (4) Maintenance Services contacts).
- f. **Ordering Activity Obligations.** Ordering Activity shall cooperate with Contractor through Appian's reasonable requests in connection with providing the Maintenance Services, including, without limitation, by providing Appian with timely access to data, information and personnel of Ordering Activity. Ordering Activity is responsible for the accuracy and completeness of all data and information provided to Appian in connection with the Maintenance Services.
- g. **Excluded Items.** Maintenance Services do not include on-site or in-person assistance or consultation, or extensive training that would normally be provided in formal training classes. In addition, Maintenance Services shall not include Technical Support (beyond an initial response) or Defect Correction to the extent required as a result of the following:
 - (i) For on-premise licenses to the Appian Software, malfunction of the computer system and communications network on which Ordering Activity has installed and is using the Appian Software;
 - (ii) Use of the Appian Software contrary to the terms of the then current Documentation;
 - (iii) Modifications, enhancements or customizations of the Appian Software;
 - (iv) Any use of the Appian Software in disregard of any known adverse consequences, including without limitation Ordering Activity's failure to make appropriate backups or to follow warning messages and other written instructions; or
 - (v) Any other cause not attributable to Contractor or Appian.

4. MAINTENANCE SERVICES FEE:

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

5. SERVICES:

a. TRAINING

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

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

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

b. ELITE SERVICES

Ordering Activity may purchase professional consulting services in connection with the Appian Software in fixed packets of hours ("Elite Services") on a firm fixed price level of effort basis. Each Elite Services package shall consist of fifty (50) hours of services over a three month period of performance. Elite Services are offered remotely through the multiple Appian offices. Ordering Activity may elect to purchase multiple packages of Elite Services to run concurrently or sequentially. The statement of work (SOW) governing Elite Services is provided as Schedule 2, Elite Services SOW, which is hereby incorporated by reference.

6. LIMITED WARRANTY AND DISCLAIMER:

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

using the Appian Software contrary to the then current Documentation, or (v) Ordering Activity combining the Appian Software with materials, hardware or data not contemplated by the parties or approved by Appian, in writing.

- b. Maintenance Services, Training and Elite Services. Subject to the limitations set forth below, Contractor warrants that it shall perform through Appian the Training, Elite Services and Maintenance Services, as applicable, in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty, Contractor's obligation and Ordering Activity's remedy is for Contractor through Appian to use commercially reasonable efforts to re-perform the defective Training, Elite Services or Maintenance Services, as appropriate, at no additional cost. If Contractor is unable to re-perform the applicable Training, Elite Services or Maintenance Services, within a commercially reasonable time after Ordering Activity notifies Contractor of the corresponding breach of this warranty, Contractor shall refund to Ordering Activity the amount Ordering Activity paid for the defective Training, Elite Services or Maintenance Services, as the case may be. Ordering Activity must notify Contractor of any breach of this warranty, in writing, within five (5) business days after the defective Training, Elite Services or Maintenance Services, as applicable, are provided to Ordering Activity.
- c. Warranty Disclaimer. THE FOREGOING WARRANTIES ARE THE ONLY EXPRESS WARRANTIES PROVIDED BY CONTRACTOR IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES IMPLIED FROM CUSTOM, USAGE IN TRADE OR COURSE OF DEALING. THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH ORDERING ACTIVITY. ORDERING ACTIVITY ACKNOWLEDGES THAT THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OR INFRINGEMENT IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES. CONTRACTOR DOES NOT WARRANT THAT THE APPIAN SOFTWARE IS FREE FROM ERROR OR WILL FUNCTION WITHOUT INTERRUPTION.

7. LIMITATION OF LIABILITY

- i) Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN 7.(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES PROVIDED HOWEVER, THAT IN THE EVENT ORDERING ACTIVITY MAKES UNAUTHORIZED COPIES OF THE SOFTWARE, CONTRACTOR SHALL BE ENTITLED TO RECOVER THE FULL AMOUNT OF ANY LICENSE FEES THAT WOULD RELATE TO SUCH COPIES.
- ii) LIMITATION OF DIRECT DAMAGES. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN 7.(iii) BELOW, THE AGGREGATE AND CUMULATIVE LIABILITY OF CONTRACTOR AND LICENSORS FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY ORDERING ACTIVITY UNDER THE ORDER GIVING RISE TO SUCH LIABILITY, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT SOFTWARE. TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES GIVING RISE TO THE LIABILITY.
- iii) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

8. INTELLECTUAL PROPERTY INFRINGEMENT

- a. If a third party makes a claim against Ordering Activity that the Appian Software directly infringes any patent, copyright, or trademark or misappropriate any trade secret ("IP Claim"); Contractor will to the extent permitted by 28 U.S.C. 516 (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (I) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (II) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (I) the use of a superseded or altered release of the Appian Software if the infringement would have been avoided by the use of a current unaltered release of the Appian Software, (II) the modification of the Appian Software, (III) the use of the Appian Software other than in accordance with the then current Documentation or this Agreement, or (IV) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.
- b. If the Appian Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (i) replace or modify the Appian Software to be non-infringing, or (ii) obtain for Ordering Activity a license to continue

using the Appian Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the license for the infringing Appian Software and refund the license fees paid for the Appian Software upon return of the Appian Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement; provided, however, if the license is for a cloud subscription described in Section B of this Agreement, then Appian shall only refund to Ordering Activity those license fees that were pre-paid and unearned at the time Appian terminates the license.

B. CLOUD SUBSCRIPTION LICENSE

Cloud Subscription licenses are governed by the terms and conditions associated with on-premise licenses listed above, plus the additional terms listed below. Additional terms associated with the Ordering Activity's license of Cloud Subscription licenses is contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

1. ADDITIONAL DEFINITIONS:

- a. "Data" means the data, information or material that Ordering Activity or its Named Users submit to the Service Providers under this Agreement.
- b. "Service Offering" means all of the following to the extent provided by Contractor under this Agreement: (i) the Appian Software as provided by the Service Provider's over the Internet; (ii) the information technology infrastructure used by the Service Providers to make the Appian Software available to Ordering Activity over the Internet; and (iii) standard Maintenance Services.
- c. "Service Providers" means Contractor, its licensors and third party hosting service providers who are responsible for making the Service Offering available to Ordering Activity over the Internet.
- e. "Subscription Start Date" means the date described in the applicable Order on which Ordering Activity is provided an initial user name and password and Ordering Activity is able to access the Service Offering through a connection to the Internet.

2. SUBSCRIPTION LICENSE:

- a. General. Subject to Ordering Activity's ongoing compliance with this Agreement and paying Contractor a corresponding subscription fee, commencing on the applicable Subscription Start Date and during the term of Ordering Activity's license to use the Service Offering, as described in the applicable Order, Contractor shall grant Ordering Activity a non-transferable, nonexclusive license, without right of sublicense, to access the Service Offering via a username and password over the Internet. Only Ordering Activity's Named Users may access and use the Service Offering. Ordering Activity must limit the number of Named Users and/or level of usage of the Service Offering, as applicable, to the number and type of licenses that Ordering Activity purchases.
- b. Extensions. Within Appian's reasonable discretion, Ordering Activity may add extensions to the Service Offering's capabilities, such as, but not limited to, components, plug-ins, external system integrations, and expressions ("Extensions"). Ordering Activity has sole responsibility for the support of these Extensions. Contractor is not responsible for any errors, unavailability or other failures in the operation of the Service Offering caused by Extensions, and Contractor's support and warranty obligations do not apply to any issues to the extent arising from an Extension.
- c. Limited Right to Change Logos and Marks. Ordering Activity may replace Appian's logos and marks appearing on the Service Offering's log-in web page and other web pages associated with the log-in page with Ordering Activity's marks and logos, provided these marks and logos do not violate the intellectual property rights of Service Providers or any third party. Ordering Activity agrees to promptly remove any such logos or marks that Appian rejects, in its reasonable discretion. Except as otherwise set forth above, Ordering Activity may not remove from the Service Offering, or alter, any of the trademarks, trade names, logos, patent or copyright notices or markings contained in the Service Offering, or add any other notices or markings to the Service Offering without Appian's express prior written consent.
- d. Prohibited Competitive Uses. Ordering Activity may not and will not authorize any third party to access the Service Offering for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- e. Probing. Without Appian's express, prior written consent, Ordering Activity shall not and shall not allow anyone working on Ordering Activity's behalf to perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan in connection with the Service Offering. Ordering Activity shall not and shall not allow anyone working on Ordering Activity's behalf to use any software tool designed to automatically emulate the actions of a human user (such tools are commonly referred to as "Robots") in conjunction with the Service Offering.

3. RESPONSIBILITIES:

- a. Equipment and Software. At Ordering Activity's expense, Ordering Activity must provide Internet access, compatible software and compatible equipment to access and use the Service Offering. As a condition for accessing and using the

Service Offering, Ordering Activity must comply with the system requirements that the Service Providers may disclose to Subscriber from time-to-time.

- b. **Usage Policies.** Ordering Activity and its Named Users must comply with all usage terms set forth herein, the applicable Order, and with any manuals, training materials, guides, specifications and associated support materials provided by the Service Providers in connection with the Service Offering, regardless of format.
- c. **Passwords and Account Usage.** Ordering Activity is responsible for maintaining the confidentiality of its account and password information, and for restricting access to its computers. Subject to the requirements of applicable law, Ordering Activity is responsible for all use of the Service Offering with Ordering Activity's usernames and passwords. In the event of a breach of security, Ordering Activity agrees to immediately change its passwords and to promptly notify Appian of such breach in writing. Ordering Activity is responsible for all activity occurring under Ordering Activity's accounts.
- d. **Reporting Unauthorized Use.** Ordering Activity shall report to Appian immediately, and use reasonable efforts to stop immediately, any copying or distribution of the Service Offering in violation of this Agreement that is known or suspected by Ordering Activity. Ordering Activity shall notify Appian immediately of any unauthorized use of any password or account or any other known or suspected breach of security.
- e. **Cooperation.** Ordering Activity shall cooperate with Contractor through Appian at all times during the implementation and servicing of the Service Offering.

4. DATA:

- a. **General.** Except to the extent of the Service Providers' rights in the Service Offering, neither Contractor nor Appian owns the Data. Ordering Activity is responsible for handling and processing all notices sent to Ordering Activity (or any Named User) by any third party claiming that the Data violates such party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act.
- b. **Transferring Data to the United States.** Contractor through Appian will provide the Service Offering using facilities and equipment located in the United States, and any Data may be transferred to the United States.
- c. **Service Providers Use of the Data.** Ordering Activity grants the Service Providers a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable right during the term of this Contract to use the Data as necessary to perform this Agreement. The Service Providers have the right, but not the obligation, to remove any Data from the Service Offering that may, in the Service Providers' sole discretion, violate this Agreement or that is otherwise objectionable.

5. SUSPENSION

Upon providing Ordering Activity with written notice, Appian may immediately suspend Ordering Activity's privilege to use the Appian Software, which suspension shall be without any liability to Appian if Appian has reason to believe (i) Ordering Activity use of the Appian Software will disrupt or threaten the use of the Appian Software, or (ii) there has been or may be a violation of the rights of a third party, violation of any applicable laws and regulations, breach of security, fraud, or misrepresentation in connection with Ordering Activity's use of the Appian Software.

6. Service Level Agreement.

Appian shall provide Ordering Activity with the limited remedies set forth in Schedule 3, which is hereby incorporated by reference.

SCHEDULE 1

Note: RENEWAL ORDERS ONLY indicates that the product is being discontinued, and is only available for renewal to existing orders. New orders will not be accepted. In the event purchase is lapsed or discontinued, reinstatement will not be permitted.

PRODUCT DESCRIPTIONS:

Part#	Description
APP7-PERP-NAMED-USER	Grants one Named User the right to use the Appian Software in perpetuity. Minimum purchase requirement is 100 Named Users. Subject to annual maintenance charges.
MAINT7- PERP-NAMED-USER	Maintenance for PERP-Named-User . Price is per Named User per year.
MAINT7-PERP-FRCT-NAMED-USER	Maintenance for APP7-Perp-Fct-Named-User, price is per fractional Named User per year. RENEWAL ORDERS ONLY.
MAINT7-PREM- PERP-NAMED-USER	Premium Maintenance for Appian 7 Perpetual Named User License. Price is per Named User per year.

MAINT7-PREM-PERP-FRCT-NAMEDUSER	Premium Maintenance for APP7-Perp-Fct-Named-User, price is per Named User per year. RENEWAL ORDERS ONLY.
APP7-CLOUD-STARTER OPTION	This add-on provides use of the Service Offering for non production use and can only be purchased in concert with an existing Appian On Premise License or Appian Cloud subscription. Set Up Fees apply to this add-on. Two (2) non-production instances of the Service Offering each with a maximum resource allocation of one (1) Amazon Elastic Compute Cloud Standard Large Instance 7.5 GB of memory, 4 EC2 Compute Units (2 virtual cores with 2 EC2 Compute Units each) or equivalent. Price is per year.
APP7-TERM-NAMED-USER	Grants one Named User the right to use the Appian Software for a 12 month term. A minimum of 100 Named User licenses is required. Price is per Named User per year. Standard maintenance is included in the annual price.
APP7-TERM-FRCT-NAMED-USER-	Grants one Named User up to one hundred (100) sessions per year. A session is counted each time a fractional Named User (a) authenticates into any one copy of the Appian Software for two hours or less, and (b) for each additional two hour period. Price is per Named User per year. Standard maintenance is included in the annual price. RENEWAL ORDERS ONLY.
APP7- TERM-EXTERNAL-LOG-ON	Appian On-Premise Term Logon License allows any number of External Users to use Appian Software on a per Logon basis for a 12 month term. A Log-on is counted per External User authentication into an Appian instance for 2 hrs or less & per each additional 2 hour period. Provides 10,000 Logons. Standard maintenance is included in the annual price.
APP7-TERM- INTERNAL-LOG-ON	Allows any number of Named Users to use the Appian Software up to one (1) year. Log On is each two (2) hour period. Purchased in blocks of 10,000. Price is per year. Standard maintenance is included in the annual price. RENEWAL ORDERS ONLY.
APP7-CLOUD-NAMED-USER	Grants one Named User the right to access and use the Service Offering an unlimited number of times in a twelve (12) month term. A minimum of 100 Named Users is required. Appian will provide one (1) production instance of the Service Offering with a maximum resource allocation of one Amazon Elastic Compute Cloud High-Memory Double Extra Large Instance 34.2 GB of memory, 13 EC2 Compute Units (4 virtual cores with 3.25 EC2 Compute Units each) or equivalent. Appian will provide two (2) non-production instances of the Service Offering each with a maximum resource allocation of one (1) Amazon Elastic Compute Cloud Standard Large Instance 7.5 GB of memory, 4 EC2 Compute Units (2 virtual cores with 2 EC2 Compute Units each) or equivalent. Standard maintenance is included in the annual price.
APP7-CLOUD-FRCT-NAMED-USER	Grants one Named User the right to access and use the Service Offering for up to 100 sessions during a 12 month term. A session is counted per Named User authentication into an Appian instance for 2 hrs or less and each additional 2 hr period. Appian will provide one (1) production instance of the Service Offering with a maximum resource allocation of one Amazon Elastic Compute Cloud High-Memory Double Extra Large Instance 34.2 GB of memory, 13 EC2 Compute Units (4 virtual cores with 3.25 EC2 Compute Units each) or equivalent. Appian will provide two (2) non-production instances of the Service Offering each with a maximum resource allocation of one (1) Amazon Elastic Compute Cloud Standard Large Instance 7.5 GB of memory, 4 EC2 Compute Units (2 virtual cores with 2 EC2 Compute Units each) or equivalent. Standard maintenance is included in the annual price. RENEWAL ORDERS ONLY.
APP7-CLOUD-EXTERNAL-LOGON-USER	Appian Cloud Logon License allows any number of External Users to use Appian SW on a per Logon basis for the 12 month term. Logon is counted per User logon to an Appian instance for 2 hrs or less & per additional 2 hr. period. Provides 10,000 Logons. Standard maintenance is included in the annual price.
APP7-CLOUD-INTERNAL-LOGON-USER	Appian Cloud Logon License allows any # of Internal Users to use Appian SW on a per Logon basis for the 12 month term. Logon is counted per User logon to an Appian instance for 2 hrs or less & per add'l 2 hr period. Provides 10,000 Logons. Standard maintenance is included in the annual price. RENEWAL ORDERS ONLY.
APP7-CLOUD-SETUP	One time set up fee per order of the Appian Software provided as part of the Service Offering.

ABM-TERM	Acquisition Business Management (ABM) is an integrated Acquisition Workbench for managing the business of acquiring goods and services. It consists of the Appian BPM suite, and the Acquisition Workbench comprising pre-built Process Models, Business Logic, Rules, Integrations, User Interfaces, Reports and Dashboards needed to purchase goods and services. The software license grant includes a purpose-based license for Appian Term Named User License and the Acquisition Workbench. Minimum purchase is 100 Named Users. ABM license is purpose based for the purpose stated on the Order. Includes maintenance for ABM and Cloud Named User licenses.
ABM-ON-PREMISE	Add on to Perpetual Named User licenses. Grants one Named User ABM for one year as add on to On Premise Perpetual license. Perpetual Named User Licenses are subject to maintenance charges in accordance with the Perpetual Named User License terms. Minimum purchase is 100 Named Users. ABM license is purpose based for the purpose stated on the Order. Perpetual Named User licenses are subject to additional maintenance charges.
APP7-CST-8-STUDENTS	One day of training at an Ordering Activity's facilities for a maximum of 8 students. Price is per day of standard Appian training, and does not include instructor travel or other direct expenses; ODCs include, but are not limited to development of customer unique curriculum, printing training materials for customer unique training.
APP7-CST-ADDL-STD	One (1) day of training at an Ordering Activity's facilities for one (1) additional student. Purchase of additional student days is valid only in conjunction with purchase of corresponding training days at an Ordering Activity facility, and may be purchased for a maximum of four (4) additional students per class. Does not include instructor travel or other direct expenses.
APP7-TRN-CREDIT-AT APPIAN	The Appian Training Credit permits one student to enroll in one day of an Appian published training course offered at Appian's training facility. Refer to www.appian.com for published training courses and dates. Maximum class size is 12 students. Price does not include other direct expenses. ODCs include, but are not limited to, development of customer unique curriculum, printing training materials for customer unique training.
APP7-TRN-CREDIT-PUBLIC	The Appian Public Training Credit permits is for one student to enrollment in one day of for an Appian published training course offered at locations other than Appian's Reston VA headquarters. One (1) Public Training Credit is equal to one (1) training day. Refer to www.appian.com for published training courses, locations and dates. Maximum class size is 12 students. Price is per day of Public Appian training, and does not include other direct expenses. ODCs include, but are not limited to, development of customer unique curriculum, printing training materials for customer unique training.
ELITE SERVICES	Firm Fixed Price Level of Effort package of 50 hours for a period not to exceed three months. Effort is in accordance with Schedule 2, Elite Services Statement of Work.

Schedule 2

ELITE SERVICES STATEMENT OF WORK

This Statement of Work ("SOW") is governed by and subject to the Agreement to which it is attached. All capitalized terms not defined in this SOW have the meanings ascribed to them in the Agreement. This SOW shall be effective as of the date of the corresponding Order ("Effective Date").

Scope

Under the terms of this SOW and at the Ordering Activity's request, Appian shall provide Elite Services associated with the specific applications that Ordering Activity has developed using the Appian Software (the "Applications").

The Elite Services shall be provided at the request of Ordering Activity's technical point of contact ("Technical POC"). Appian may provide the following possible tasks as part of the Elite Services, depending upon the requests made by the Technical POC. This list is for illustration purposes only as Appian may perform some, none, or all of these activities:

- On-board the Ordering Activity and setup services
- Assist with analysis and troubleshooting of the Applications on behalf of Ordering Activity staff.
- Coordinate troubleshooting the Applications with Appian's product support team on behalf of Ordering Activity.
- Provide Application development guidance and mentoring pertaining to the Applications.
- Deliver and document enhancements and fixes to the Applications such as:
 - Process Configuration
 - Form Configuration
 - Report Configuration
 - Page/Dashboard Configuration

- Validation and unit testing
- Support testing and validation by the Ordering Activity of fixes or enhancements to the Applications
- Provide deployment instructions or assist with execution of the deployment of enhancements and fixes to the Applications on behalf of Ordering Activity's staff

Request Types

Ordering Activity's requests for Elite Services shall be classified as one (1) of the following types:

1. Issue Functional issue or problem encountered by users that result in error or non-operational features of the Application.
2. Enhancement: Changes to the existing functionality or new features extending the Application.
3. Task: Help with Application administration or any other non-development task.

Elite Services Request Process

The Ordering Activity's Technical POC must create a ticket in Appian's Elite support request system ("Trac"). Tickets must be assigned a preliminary type and priority classification by the Ordering Activity's Technical POC with pertinent request types and priorities outlined below. Following initial investigation and impact assessment, Appian may update the ticket classification as appropriate.

- Request Types:
 - Issue
 - Enhancement
 - Task
- Request Priorities (Listed in order of decreasing priority):
 - Priority Level 1 (P1) – Represents a critical priority.
 - Priority Level 2 (P2) – Represents a major priority.
 - Priority Level 3 (P3) – Represents a minor priority.

Application Issue P1 tickets are defined as problems with the Application that prevent users from using the system and for which there is no available workaround, or problems with the Application which drastically impacts the user experience.

Response Time:

For Application Issue P1 tickets, the Appian's Elite Services technical manager will initiate a preliminary analysis, subject to the level of effort ("LOE") requirements listed below, and respond to the Ordering Activity's Technical POC or sponsor by email and/or phone within eight (8) business hours of receiving the corresponding ticket on Trac. The Elite Services technical manager will work with the Ordering Activity's Technical POC or sponsor to investigate and analyze the issue to determine the appropriate resource to resolve the issue. If at any time it is discovered that the issue is an Appian Software defect (not an Application related issue), Ordering Activity must work with Appian's product support team to resolve the issue as part of Maintenance Services. . If Ordering Activity requests that the assigned Elite Services resource continue to be engaged to assist with troubleshooting and identification of or implementation of a workaround, the work shall be part of the Elite Services and billable in accordance with this SOW. For all other requests, and subject to the LOE requirements listed below, Appian will conduct initial analysis and respond to the Ordering Activity Technical POC or sponsor within sixteen (16) business hours of receiving Ordering Activity's request, and communicate preliminary findings, LOE estimates as applicable, and schedule the execution of the request. Appian will endeavor to provide resources to begin the Elite Services associated with the specific request within one (1) calendar week of Ordering Activity's request, subject to resource availability and the estimated LOE to implement.

Level of Estimate Limitations

- Appian will not spend greater than four (4) hours investigating requests initiated by the Ordering Activity Technical POC without first obtaining approval from the Ordering Activity sponsor (email shall suffice, but Trac update preferred).
- Prior to commencing performing Application enhancements initiated by the Ordering Activity Technical POC or sponsor, the Appian Elite Services technical manager will provide an estimated LOE for the Elite Services for the Ordering Activity sponsor's approval (for approval purposes, an email to the Appian Elite Services technical manager shall suffice, but Trac update preferred).
- LOE estimates provided will pertain to the estimated number of Elite Services hours to implement a resolution. When a resolution will require testing efforts by Ordering Activity and/or deployment from one environment to another, additional time may be required by Appian to support these activities which will be beyond the time agreed upon within the estimated LOE.
- Appian will use good faith efforts to perform the Elite Services within any provided LOE estimates, but given that the Elite Services will be provided at Ordering Activity's request and coordinated by Ordering Activity, Appian cannot guarantee completion in these timeframes. If during the course of implementation, Appian recognizes that additional implementation efforts will be required that are at least twenty five percent (25%) greater than those appearing in the agreed upon estimated LOE Appian will contact the Ordering Activity to provide additional information and will work with Ordering Activity in good faith to develop a revised estimated LOE.

Status Reports

Appian's Elite Services technical manager will provide the Ordering Activity Technical POC direct access to Trac to manage and update these requests to the Elite Services team. When Elite Services have been provided, Appian will provide a monthly status report to the Ordering Activity Technical POC detailing the Elite Services performed in the immediately preceding month.

Intellectual Property Rights

a. Ordering Activity's Pre-Existing Data. As between Appian and Ordering Activity, Ordering Activity retains ownership (including all intellectual property rights therein) in all material provided to Appian in connection with performing the Elite Services ("Ordering Activity Pre-existing Materials"). Ordering Activity grants Appian a non-exclusive, nontransferable, paid-up license to use any Ordering Activity Pre-existing Materials solely as reasonably necessary for Appian to perform the Elite Services. Appian's license to use Ordering Activity's Pre-Existing Material shall automatically expire upon the earlier of Appian no longer requiring Ordering Activity's Pre-Existing Material to perform this SOW or upon the termination or expiration of the Agreement.

b. Appian's Pre-existing Material. Appian or its licensors shall retain ownership (including all intellectual property rights therein) of Appian's work product provided as part of the Elite Services that is developed prior to or independently of the SOW, and all derivative works thereof ("Appian Pre-existing Material"). Upon Ordering Activity paying all amounts due therefore, Appian shall license the Appian Pre-existing Material to Ordering Activity in accordance with the license terms applicable to the Appian Software set forth in this Agreement, and as purchased in the corresponding Order.

c. Specifically Developed Material. Upon payment of all amounts due therefore, Appian shall provide Ordering Activity with a paid-up, non-exclusive, irrevocable worldwide license to reproduce, prepare derivative works from, perform publicly, and display publicly Appian's work product which is specifically developed for Ordering Activity as part of the Elite Services.

Schedule 3

Cloud Service Level Agreement

This Schedule 3 is governed by and subject to the Agreement to which it is attached. All capitalized terms not defined in this Schedule have the meanings ascribed to them in the Agreement.

1. **Service Level Agreement**. Subject to the exclusions set forth below and to the extent Ordering Activity is compliant with the Agreement, Appian warrants that Ordering Activity's production instance of the Service Offering will be available ninety-nine and one-half percent (99.5%) of the time on a monthly basis 24x7, 365 days per year. The Service Offering will be deemed available if a Named User is able to access the Service Offering's log-in page on the production instance and is able to log-in to the Service Offering using the Named User's then current password and username. Unavailability shall be deemed to commence once Ordering Activity reports a suspected lack of availability to Appian, and Appian, acting promptly and in good faith, confirms the lack of availability. The Service Offering shall be deemed available once Appian restores the operation of the Service Offering's log-in page.

2. **Limited Remedy**. Subject to the exclusions set forth herein, if availability falls below the 99.5% threshold identified above, Ordering Activity shall accrue a credit of the percentage of the then current monthly service fee, in the amount described in the table below (each such credit is referred to as a "Service Credit"). Appian will issue Ordering Activity a credit (or by check/wire if credit occurs in final service month) which will be applied to the invoice in the month following the applicable event.

Monthly cumulative availability less than 99.5%	Service Credits (% of applicable monthly service fee)
30 minutes	5%
31 – 90 minutes	10%
91 – 150 minutes	20%
151 – 210 minutes	30%
211 – 270 minutes	55%
Greater than 270 minutes	100%

Ordering Activity must request Service Credits, in writing, within thirty (30) calendar days after the unavailability. Service Credits are accumulated monthly with the monthly cumulative unavailability being reset to zero minutes at the beginning of each calendar month. Service Credits represent Ordering Activity's exclusive remedy and Appian's sole responsibility in connection with unavailability.

3. **Exclusions**. Downtime caused by any of the following situations shall not count as unavailability:

- (a) Any time the Service Offering is not available as a result of scheduled maintenance activities, Ordering Activity initiated maintenance or any other agreed-to scheduled downtime activity;
- (b) Unavailability of the Service Offering due to modifications of the Service Offering by Ordering Activity or its agents, including the development of Extensions, unsupported programming, unsupported integrations or malicious activities; or

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- (c) Events outside Appian's reasonable control and not caused by Appian's fault or negligence as defined by FAR 52.212-4(f).

Aruba Networks
1344 Crossman Avenue
Sunnyvale, CA 94089

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

ARUBA NETWORKS, INC.

ARUBA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. LICENSE

Subject to Ordering Activity's (herein also referred to as "You" or "Your") full compliance with all the terms and restrictions set forth in this Attachment A, Contractor grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sub licensable license to use the Aruba software programs ("Programs").

The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs ("Controls"). Contractor and Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Contractor or Aruba responsible for such usage of such Controls.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, "Support Enhancements"). Support Enhancements will be considered Programs for purposes of this Attachment A, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, know-how, techniques, processes, ideas, algorithms, and software design and architecture ("Proprietary Information"). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Attachment A, you shall hold in confidence and protect, and shall not use (except as expressly authorized by this Attachment A) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba's hardware products or an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Contractor through Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Contractor through Aruba. You may physically transfer the base operating system Programs and this Attachment A to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Attachment A, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Contractor through Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Contractor through Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

D. You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba's legal obligations and to protect Aruba's legal rights. Aruba will not use any information gathered in this manner for any other purpose.

4. LIMITED WARRANTY AND DISCLAIMER

Contractor warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Contractor through Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable, will replace the media without charge to you. Contractor shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND CONTRACTOR EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.

EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. RESERVED

6. RESERVED

7. U.S. GOVERNMENT RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to "restricted rights" as that term is defined in Defense Federal Acquisition Regulations ("DFAR") in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered "restricted computer software" and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations ("FAR") in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.

8. RESERVED

ARUBACARE TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **“Access Point Supported Product”** means the Aruba Access Points, antennas, Access Point accessories and Wireless Mesh products, for which ArubaCare Support is purchased by Customer.
- 1.2. **“AirWave Software”** means the multi-vendor management software provided by Aruba under the brand name AirWave for which ArubaCare support is purchased by Customer.
- 1.3. **“Customer Technical Personnel”** means any of the designated employees of Customer who have undergone training regarding the proper operation of the Supported Products.
- 1.4. **“Documentation”** means Aruba's published user manuals for the Supported Products that are furnished to Customer by Aruba.
- 1.5. **“Error”** means a material failure of the Supported Product to operate substantially in accordance with the applicable Documentation.
- 1.6. **“Hardware”** means the physical hardware components of the Supported Product.
- 1.7. **“Maintenance Release”** means a grouping of bug fixes related to a particular feature release that is denoted by a change to the right of the second decimal point (e.g., 2.1.1 or 2.1.2).
- 1.8. **“Major Release”** means any new version or release of the Software that includes substantial new functionality or features that is denoted by a change to the left of the first decimal point (e.g., 2.0 or 3.0).
- 1.9. **“Minor Release”** means any new version or release of the Software that includes some new functionality or features that is denoted by a change to the right of the first decimal point (e.g., 2.1 or 2.2).
- 1.10. **“Patch Release”** means a customer specific release to be delivered in the event of an emergency in Aruba's determination that is denoted by a change to the right of the third decimal point (e.g., 2.1.1.1 or 2.1.1.2).
- 1.11. **“Renewal Term”** has the meaning set forth in **Section 6.1 (Term)**.
- 1.12. **“Release”** means any of a Major Release, Minor Release, Maintenance Release or Patch Release.
- 1.13. **“Software”** means the software components of the Supported Product.
- 1.14. **“Supported Product”** means the System Supported Product, the Access Point Supported Product and the AirWave Software.
- 1.15. **“Support Services”** means the services to be performed by Aruba pursuant to this Agreement.
- 1.16. **“System Supported Product”** means the Aruba Mobility Controllers, Chassis, Line Cards, Power Supplies, Supervisor Cards, Spares and Software for which Customer must purchase ArubaCare Support as a unit.

2. ARUBACARE SUPPORT

- 2.1. **Technical Support** – refer to Section 3 of this Agreement
- 2.2. **Advance Hardware Replacement.** If the System Supported Product, or Access Point Supported Product if purchased, when used as intended under normal operating conditions, fails to perform in substantial accordance with the Documentation, Ordering Activity (herein also referred to as “Customer”) shall promptly notify Contractor through Aruba via email of such failure, including details of the failure that are sufficient to permit Aruba to diagnose and replicate the problem. If the failure is of a character that Aruba determines requires factory repair, then Aruba will use commercially reasonable efforts to ship replacement Hardware after making such determination, based on the schedule set forth in Attachment A. Within thirty (30) days after notice of failure, Customer will (a) obtain a Return Merchandise Authorization (RMA) number from Aruba; (b) pack the Hardware to protect it from damage while in transit; and (c) ship the nonconforming Hardware to Aruba, with the RMA number clearly displayed on the exterior of the package. If, after attempting to repair the Hardware, Aruba finds no Error in the Hardware, then Aruba may charge Customer a reasonable replacement charge consistent with the Schedule Price List. If Customer fails to ship the nonconforming Hardware to Aruba within thirty (30) days after notice of failure, Aruba will invoice the Customer the list price of the Hardware.
- 2.3. **Releases.** Upon purchase of ArubaCare, Customer will be entitled to obtain and use all Major, Minor, Maintenance, and Patch Releases that are made available by Aruba for the Supported Product during the term of this Attachment A. Aruba may make such Major, Minor, Maintenance, and Patch Releases available to Customer through electronic download or on optical, magnetic, or other removable media. The provision of any Major, Minor, Maintenance, and Patch Release to Customer will not operate to extend the original warranty period on the Software in the Supported Product. Customer

can download the Major, Minor, Maintenance, and Patch Releases from the Aruba Support Center at <https://support.arubanetworks.com>.

- 2.4. **Intellectual Property.** Upon the provision of a Release to Customer, such Release will be deemed to be licensed under the terms and conditions of the software license herein, and Customer will acquire license rights to use such Release in accordance with the terms and conditions herein. There are no express or implied licenses in this Attachment A, and all rights are reserved to Aruba.
- 2.5. **On-Site Support.** Unless Customer has purchased ArubaCare Same-Day Onsite Support, ArubaCare support is a remote service, and DOES NOT include any provisions for on-site support. At Contractor through Aruba's discretion and with approval of the Customer, Aruba may send a resource on site for troubleshooting purposes. Contractor may invoice Customer for time and materials in accordance with Contractor's then-current GSA rates. If Customer has purchased ArubaCare Same-Day Onsite Support (for controllers only), a technician will arrive on site to replace the defective unit. This is a hardware replacement service only. Onsite technicians are not deployed to help with troubleshooting or gathering packet captures, etc. The technicians can help assist with installing and testing the replacement Hardware under the guidance of the Customer in order to restore basic IP connectivity.
- 2.6. **Wireless Mesh Support.** Support for Wireless Mesh Products purchased prior to August 21, 2010 from Azalea is available on Monday(s)-Friday(s) from 8 am – 5 pm Pacific Time. For Priority 1 issues Customer should call 1-800-943-3526 or within China at +86-10-58851177 and Aruba will respond within one business hour.
- 2.7. **Scope of Support for AirWave Software.** Contractor through Aruba will provide telephone support on general questions regarding installation, configuration and usage of the AirWave Software. This telephone support will not include (i) the configuration of third party products, except to the extent the call relates to AirWave's support of those products and other issues that are not generally addressed in AirWave's Documentation.

3. ARUBACARE TECHNICAL SUPPORT SERVICES

3.1. Telephone and E-mail Support

- (a) **Telephone Support.** Contractor through Aruba will provide telephone support for the use of the Supported Product with its ArubaTAC customer service center twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year. Aruba will use commercially reasonable efforts to provide an initial response within one (1) hour of Customer contacting ArubaTAC for Priority 1 issues (as defined in section 3.2). ArubaTAC is staffed by experienced engineers trained to provide customer assistance for the Supported Products.
- (b) **Generally.** All telephone support will be provided solely to Customer Technical Personnel, and will consist of answering questions regarding the proper operation of the Software, providing troubleshooting assistance, and rendering general information, advice, and instructions in connection with the end use of the Supported Product. Customer will be responsible for providing first-line helpdesk support for individual end-users of the Supported Product, and Customer will be responsible for screening first-line technical inquiries and escalating to Contractor through Aruba only those issues that cannot be resolved by the Customer Technical Personnel. Aruba will have no obligation to accept calls directly from, or otherwise interact directly with, personnel other than the Customer Technical Personnel.

<i>In the United States and Canada:</i>	1-800-WIFI-LAN (1-800-943-4526)
<i>Outside of China (for Wireless Mesh only):</i>	1-800-943-3526
<i>China (for Wireless Mesh only):</i>	+86-10-58851177
<i>International:</i>	1-408-754-1200

Attachment B herein provides information on technical support access numbers outside of the United States.

- (c) **E-mail Support.** Alternatively, Customer may submit technical inquiries to Aruba via e-mail, at support@arubanetworks.com. Contractor through Aruba will use commercially reasonable efforts to respond to e-mail within one (1) business day; however, Customer agrees and acknowledges that there may be delays in responses to inquiries submitted via e-mail.
- #### 3.2 Error Correction.
- If the Supported Products exhibit an Error, the Customer will promptly notify Contractor through Aruba of such Error, and Aruba will use commercially reasonable efforts to address the Error as described in this section.
- (a) **Priority Levels.** If Customer identifies an Error, Customer will promptly report such Error in writing to Contractor through Aruba providing the serial number of the affected product (for hardware) and specifying (a) the nature of the Error; (b) the circumstances under which the Error was encountered; (c) technical information relating to the operating environment in which the Software was running at the time of the Error; (d) the steps, if any, that Customer took immediately following the Error; and (e) the immediate impact of the Error upon the ability of Customer's network to function. Upon receipt of such Error report, Aruba will evaluate the Error and classify it into one of the following Priority Levels based upon the following priority classification criteria:

PRIORITY LEVEL	PRIORITY CLASSIFICATION CRITERIA
Priority 1	Critical system or service outage in a live environment that results in a severe degradation of overall network performance and/or significant reduction in capacity.
Priority 2	Intermittent degradation of system or service performance that impacts end-user service quality or impairs network operator control or operational effectiveness. Also includes loss of redundancy or diagnostic capabilities.
Priority 3	Minor degradation of system or service performance that does not impact end-user service quality and minimal impact on network operations.
Priority 4	No impact on system or network operation. Information requests or standard questions on configuration or functionality of equipment.

(b) Problem Resolution

1. **Priority Level 1 Errors.** Assuming the customer is willing to commit resources to resolve critical issues on a 24x7 basis, Contractor through Aruba will commit the same resources to work on a round-the-clock basis until a correction or workaround to the Priority Level 1 Error is found. Such corrections or workarounds may take the form of Maintenance or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate. Aruba will provide Customer with a problem resolution schedule and inform Customer of its progress on a daily basis. Priority Level 1 Errors will be downgraded to a Priority Level 2 upon the delivery of a workaround.
 2. **Priority Level 2 Errors.** Contractor through Aruba will commit resources to formulate a correction or workaround to the Priority Level 2 Error within during Aruba's normal business hours and in accordance with its existing release schedule. Such corrections or workarounds may take the form of Maintenance or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate. Aruba will provide Customer with a problem resolution schedule and inform Customer of its progress on a weekly basis.
 3. **Priority Level 3 Errors.** Contractor through Aruba will commit to provide corrections or workarounds to Priority Level 3 Errors during Aruba's normal business hours and in accordance with its existing release schedule. Such corrections or workarounds may take the form of Major, Minor, Maintenance, or Patch Releases, procedural solutions, correction of Documentation errors, or other such remedial measures as Aruba may determine to be appropriate.
 4. **Priority Level 4 Errors.** Contractor through Aruba will commit to provide resources during normal business hours to provide information assistance or provide feedback.
- 3.3 Aruba Support Center Web Site.** Customer may also access the Aruba Support Center at <http://www.arubanetworks.com/support>. The Aruba Support Center provides Customers with a Knowledge Base, FAQs, field alerts, release notes and product documentation to allow Customers to troubleshoot issues that they may be having with the Supported Products. The Aruba Support Center is available twenty four (24) hours per day, seven (7) days per week.
- 3.4 Exclusions.** Notwithstanding anything to the contrary in this Attachment A, Contractor will have no obligation to provide any Support Services to Customer to the extent that Customer's use of the Supported Products is in breach of this Attachment A or such Support Services arise from or relate to any of the following: (a) any modifications or alterations of the Supported Products by any party other than Aruba or Aruba's subcontractors; (b) any use of a version of Software that has been declared 'end of life' by Aruba; (c) any use of the Supported Products in an environment not meeting the operating requirements set forth in the Documentation; (d) any issues arising from the failure of the Supported Products to interoperate with any other software or equipment, except to the extent that such interoperability is expressly mandated in the applicable Documentation; (e) any breakdowns, fluctuations, or interruptions in electric power or the telecommunications or cable network; (f) a force majeure event; or (g) any Error that is not reproducible by Aruba. In addition, Customer agrees and acknowledges that any information relating to malfunctions, bugs, errors, or vulnerabilities in the Supported Products constitutes confidential information of Aruba, and Customer will refrain from using such information for any purpose other than obtaining Support Services from Aruba, and will not disclose such information to any third party. Customer will be charged at Contractor's then current GSA time and material rates for the services rendered by Contractor through Aruba if Aruba determines that no Error exists.
- 4. CUSTOMER RESPONSIBILITIES.** As a condition to all of Aruba's obligations under this Attachment A, Customer will provide the following:
1. **Trained Personnel.** Customer will ensure that all of its personnel who use the Supported Products in the course of their employment are familiar with the Supported Product to the extent necessary for them to operate the Supported Product with reasonable competence. Without limiting the generality of the foregoing, Customer will cause all Customer Technical Personnel to complete such training and instruction as Aruba may reasonably require from time to time. Upon the appointment of any new Customer Technical Personnel, Customer will take reasonable steps to expeditiously train the new individual to appropriate standards of technical competence.

2. **General Cooperation.** Customer will cooperate with Aruba to the extent that such cooperation would facilitate Aruba's provision of Support Services hereunder. Without limiting the foregoing, at Aruba's request, Customer will (i) provide Aruba with reasonable access to appropriate personnel, records, network resources, maintenance logs, physical facilities, and equipment; (ii) refrain from undertaking any operation that would directly or indirectly block or slow down any maintenance service operation; (iii) promptly inform Aruba of the physical location of the Supported Products and any changes thereto; and (iii) comply with Aruba's instructions regarding the use and operation of the Supported Products, including ensuring that all equipment is safeguarded by adequate surge protection and backed up with a universal power supply. Customer agrees and acknowledges that Aruba's obligations under this Agreement are limited to the Supported Products, and that Aruba is not responsible for the operation and general maintenance of Customer's operating environment. Without limiting the foregoing, Customer will keep a detailed operations log for the Supported Products and will document any Errors that arise.

5. **RESERVED**

6. **RESERVED**

7. **LIMITED WARRANTY.**

Contractor warrants only to Customer that the Support Services will be performed with at least the same degree of skill and competence normally practiced by Aruba-trained technical support engineers performing the same or similar services. Customer's remedy, and Contractor's entire liability, for any breach of the foregoing warranty shall be for Contractor through Aruba to re-perform, in a conforming manner, any nonconforming Support Services that are reported to Contractor by Customer in writing within sixty (60) days after the date of completion of such Services. In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE SUPPORT SERVICES AND ALL MATERIALS FURNISHED TO CUSTOMER UNDER THIS ATTACHMENT A ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CONTRACTOR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, GUARANTEES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SUPPORT SERVICES AND ANY MATERIALS FURNISHED HEREUNDER, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, ACCURACY, AND QUIET ENJOYMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS ATTACHMENT A IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION OTHER THAN THOSE SET FORTH IN THE PRECEDING PARAGRAPH.

8. **RESERVED**

9. **RESERVED**

ATTACHMENT A

Global Parts Advance Replacement Schedule (target arrival time)

ArubaCare Same-Day

For Customers who purchase ArubaCare Same-Day or ArubaCare Same-Day Onsite (where available) replacement parts will arrive within four (4) hours of Contractor through Aruba's determination that the Supported Product is defective, provided that Customer has promptly informed Aruba of the physical location of the Supported Products. Customers agree that in some locations Aruba may need up to ninety (90) days from the delivery of the initial Support Products purchased by Customer to establish spare depots and identify and train technicians capable of offering on-site services. During this 90 day window, if a part is not available to be delivered same day, Aruba will make commercially reasonable efforts to deliver the replacement part as quickly as possible from the closest parts depot.

ArubaCare Next-Day

For Customers who purchase ArubaCare Next-Day, replacement parts will arrive next business day of Contractor through Aruba's determination that the Support Product is defective, provided that Customer has promptly informed Aruba of the physical location of the Supported Products. ArubaCare Next-Day is supported in all countries where Aruba is approved to sell product. Customers agree that in some locations Aruba may need up to ninety (90) days from the delivery of the initial Support Products purchased by Customer to establish spare depots. During this 90 day window, if a part is not available to be delivered next day, Aruba will make commercially reasonable efforts to deliver the replacement part as quickly as possible from the closest parts depot. Calls must be received by the following times for next business day parts arrival based on region:

14:00 PST for United States and Latin America

14:00 EST for Canada

14:00 CET for EMEA

14:00 Singapore Time for APAC

ATTACHMENT B

Global Technical Support Numbers

Most current details can be found at: http://www.arubanetworks.com/support/contact_support.php

North America

Toll Free: 1-800-WiFi-LAN (1-800-943-4526) or +1-408-754-1200
support@arubanetworks.com

Latin America

Brazil:

- 800-4943-4526 *landline only
- 55-21-3958-0828 *landline & mobile

Chile: 1230-020-0372

Mexico: 01-800-123-1716

Other International: +1-408-754-1200

support@arubanetworks.com

EMEA

Belgium: Belgacom: 0-800-4943-4526

Denmark: 800-4943-4526

Egypt:

- 02-2510-0200-888-517-7267 * outside Cairo
- 2510-0200-888-517-7267 * within Cairo

Finland: 800-4943-4526

France: France Telecom: 00800-4943-4526

Germany: Deutsche Telekom: 00800-4943-4526

Ireland: EIRCOM: 00800-4943-4526

Israel:

- Barack ITC: 013800-4943-4526
- Bezeq: 014800-4943-4526
- Golden Lines: 012800-4943-4526

Italy: 800-4943-4526

Netherlands: 800-4943-4526

Norway: 800-4943-4526

Saudi Arabia: 800-844-5708

Spain: 800-4943-4526

Sweden: 800-4943-4526

Switzerland: 800-4943-4526

Turkey: 0811-288-0001 and then dial 888-517-7267

UAE: 800-0441-6077

United Kingdom: 00800-4943-4526

Other International: 1-408-754-1200

emea_support@arubanetworks.com

APAC

Australia:

- Reach: 11-800-4943-4526
- 1300-4-ARUBA (1300-4-27822)

China:

- China Netcom Group: 00800-4943-4526
- China Telecom South: 00800-4943-4526

Hong Kong: HKTI: 001800-4943-4526

India: 044 667 68150

Japan:

- IDC: 0061-010800-4943-4526 * Any fixed, mobile & payphone
- IDC: 010800-494-34536 * Select fixed phones
- JT: 0041-010800-4943-4526 * Any fixed, mobile & payphone
- JT: 010800-4943-4526 * Select fixed phones

- KDD: 001-010800-4943-4526 * Any fixed, mobile & payphone
- KDD: 010800-4943-4526 * Select fixed phones

Korea:

- DACOM: 002800-4943-4526
- KT: 001800-4943-4526
- ONS: 008800-4943-4526

Malaysia:

- 800-4943-4526

New Zealand: 800-4943-4526

Singapore: Singapore Telecom: 001800-4943-4526

Taiwan: CHT-I: 00800-4943-4526

Thailand: 800-4943-4526

Other International: 1-408-754-1200

Attivo Networks, Inc.
47697 Westinghouse Dr., Suite 201
Freemont, CA 94539

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 - qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

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- c) Convey individual copies of the object code with a copy of the written offer to provide the Corresponding Source. This alternative is allowed only occasionally and non-commercially, and only if you received the object code with such an offer, in accord with subsection 6b.
- d) Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.
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If you convey an object code work under this section in, or with, or specifically for use in, a User Product, and the conveying occurs as part of a transaction in which the right of possession and use of the User Product is transferred to the recipient in perpetuity or for a fixed term (regardless of how the transaction is characterized), the Corresponding Source conveyed under this section must be accompanied by the Installation Information. But, this requirement does not apply if neither you nor any third party retains the ability to install modified object code on the User Product (for example, the work has been installed in ROM).

The requirement to provide Installation Information does not include a requirement to continue to provide support service, warranty, or updates for a work that has been modified or installed by the recipient, or for the User Product in which it has been modified or installed. Access to a network may be denied when the modification itself materially and adversely affects the operation of the network or violates the rules and protocols for communication across the network.

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 - c) For a Combined Work that displays copyright notices during execution, include the copyright notice for the Library among these notices, as well as a reference directing the user to the copies of the GNU GPL and this license document.
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 - 2. Use a suitable shared library mechanism for linking with the Library. A suitable mechanism is one that (a) uses at run time a copy of the Library already present on the user's computer system, and (b) will operate properly with a modified version of the Library that is interface-compatible with the Linked Version.
 - e) Provide Installation Information, but only if you would otherwise be required to provide such information under section 6 of the GNU GPL, and only to the extent that such information is necessary to install and execute a modified version of the Combined Work produced by recombining or relinking the Application with a modified version of the Linked Version. (If you use option 4d0, the Installation Information must accompany the Minimal Corresponding Source and Corresponding Application Code. If you use option 4d1, you must provide the Installation Information in the manner specified by section 6 of the GNU GPL for conveying Corresponding Source.)

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- a) Accompany the combined library with a copy of the same work based on the Library, uncombined with any other library facilities, conveyed under the terms of this License.
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Authentic8
201 San Antonio Circle Suite 245
Mountain View, CA 94040

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

1. **Scope.** This Rider and the attached **Authentic8** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.
 - f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
 - g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.
 - h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

- i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.
- j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.
- k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.
- l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.
- m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
- n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
- o) **Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
- p) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- q) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.
- r) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

Authentic8 Terms of Service as of 6 July 2012

Legalese can be tedious and heavy. Authentic8 wants to deliver a valuable service, but there are some basic ground rules, which are described below. You need to read the complete document, but basically:

- When you register to use Authentic8, we store the information you give us, including any website credentials that you chose to store with us.
- Should you store your credentials with us, Authentic8 will help you log in to your web-based accounts. Our servers do this automatically, and we will never access your credentials unless you tell us to.
- We can't always anticipate problems with other websites or web services, and so we can't be responsible for your relationship with those third parties.
- Please don't attempt to decompile or otherwise reverse engineer our software.
- Likewise, we take a rather dim view of someone trying to hack or spoof Authentic8 so please don't try to attack our service.
- Please don't do anything illegal using Authentic8. We reserve the right to report illegal activities to the appropriate law enforcement or civil authorities.
- If you're an administrator, you agree that all your users will be bound by these terms.
- We believe in rapid iteration, and so we're always updating Authentic8, including the App software you install on your computer. We do this to give you access to new features, as well as to constantly improve security. When we make changes, we'll do our best to inform you.

That is essentially it. The full legal text is below—and you should review it—but we wanted to give you some plain language up front. Thanks for reading.

Authentic8, Inc. ("Authentic8," "we" or "our") provides an internet security service through our website, accessible at www.authentic8.com and our Authentic8 App software (together the "Authentic8 Service"). Please read carefully the following terms and conditions ("Terms") and our Privacy Policy, which may be found at <http://www.authentic8.com/privacy/>. These Terms govern your access to and use of the Authentic8 Service and constitute a binding legal agreement between the Ordering Activity and Authentic8. If you accept these Terms or use the Authentic8 Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, "you" and "your" will refer and apply to that company or other legal entity. If you have been granted access to and use of the Authentic8 Service by and on behalf of the primary account holder, whether directly or through an administrator, you also agree to abide by these Terms.

YOU ACKNOWLEDGE AND AGREE THAT, BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE AUTHENTIC8 SERVICE.

Acknowledgment and Disclaimer

You acknowledge that the Authentic8 Service may not be in final form or fully functional and may not operate properly or contain errors. You assume all risk arising from use of the Authentic8 Service including, without limitation, the risk of damage to your computer system or the corruption or loss of content or information.

Authentic8 warrants that the Services will be performed substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8's control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. Authentic8 Services warrants that the services will, for a period of sixty(60) days from the date of your receipt, will be performed in accordance with the terms and conditions of the GSA Schedule Contract. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, The Authentic8 Service is provided "AS IS," without warranty of any kind. Authentic8 makes no representations or warranties regarding the suitability of the Authentic8 Service for your intended requirements or purposes or regarding any data or information that you download or access through the use of the Authentic8 Service.

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You agree that all feedback and comments and suggestions for improvements to the Authentic8 Service (collectively, "Feedback") provided to Authentic8 will be the sole and exclusive property of Authentic8 and you hereby assign to Authentic8 and agree to assign to Authentic8 all of your right, title, and interest in and to all Feedback, including all intellectual property rights therein. At Authentic8's request and expense, you will execute documents and take such further acts as Authentic8 may reasonably request to assist Authentic8 to acquire, perfect and maintain its intellectual property rights and other legal protections for the Feedback.

Eligibility

The Authentic8 Service is intended solely for persons who are 18 or older. Any access to or use of the Authentic8 Service by anyone under 18 is expressly prohibited. By accessing or using the Authentic8 Service you represent and warrant that you are 18 or older.

Registration

Past a trial period designated by Authentic8, you may only use the Authentic8 Service if you have a current, valid subscription. In order to use the Authentic8 Service, you must register to create an Authentic8 user account. During the registration process, you will be required to provide certain information and you will establish a username and a password. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. You are responsible for safeguarding your login credentials. You agree not to disclose your login credentials to any third party and to take sole responsibility for any activities or actions under your user account, whether or not you have authorized such activities or actions, including actions taken by users to whom you have granted access and use of the Authentic8 Service on your behalf, directly or through your account administrators. You will immediately notify Authentic8 of any unauthorized use of your user account.

Third Party Websites – Account Information

As a registered user of the Authentic8 Service, you may have the option of providing Authentic8 with login information and credentials, including but not limited to usernames and passwords, and other account information for your personal accounts with certain third party websites, in order to allow Authentic8 to use, store and submit your credentials on your behalf to access your accounts with such third party websites. By providing Authentic8 with such credentials, you understand and agree that Authentic8 will use, store and submit your credentials on your behalf, in order to provide the Authentic8 Service in accordance with your user account settings. You have the ability to disable the storage and submission of your credentials for your account with any third party website at any time by adjusting your Authentic8 user account settings. PLEASE NOTE THAT YOUR RELATIONSHIP WITH EACH THIRD PARTY WEBSITE IS GOVERNED BY THE AGREEMENT YOU HAVE WITH SUCH THIRD PARTY WEBSITE. ANY RISK OF LOSS RELATING TO THE USE OF SUCH THIRD PARTY WEBSITES REMAINS ENTIRELY WITH YOU. You acknowledge and agree that Authentic8 is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

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We reserve the right to add additional features or functions to the Authentic8 Service, including the Authentic8 App. When installed on your computer, the Authentic8 App communicates with our servers. We may require the updating of the Authentic8 App when we release a new version, or when we make new features available. This update may occur automatically or upon prior notice to you and may occur all at once or over multiple sessions. You acknowledge and agree that we have no obligation to make available to you any subsequent versions of the Authentic8 App.

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Restrictions

Except as expressly specified in these Terms, you agree not to modify the Authentic8 App, including but not limited to adding new features or otherwise making adaptations that alter its functionality. You agree to not use or allow others to use the Authentic8 application except in conjunction with an authorized subscription from Authentic8. You acknowledge and agree that portions of the Authentic8 Service, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Authentic8 and its licensors. Accordingly, you agree not to disassemble, decompile or reverse engineer the Authentic8 Service, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

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Privacy

See Authentic8's Privacy Policy at <http://www.authentic8.com/privacy/> for information and notices concerning Authentic8's collection and use of your personal information.

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moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

General Prohibitions

You agree not to do any of the following:

- Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person; or (vii) promotes illegal or harmful activities or substances.
- Use, display, mirror or frame the Authentic8 Service, or any individual element within, Authentic8's name, any Authentic8 trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Authentic8's express written consent;
- Access, tamper with, or use non-user areas of the Authentic8 Service, Authentic8's computer systems, or the technical delivery systems of Authentic8's providers;
- Attempt to probe, scan, or test the vulnerability of any Authentic8 system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Authentic8 or any of Authentic8's providers or any other third party (including another user) to protect the Authentic8 Service;
- Attempt to access or search the Authentic8 Service or download information or data from the Authentic8 Service through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Authentic8 or other generally available third party web browsers;
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- Use any meta tags or other hidden text or metadata utilizing a Authentic8 trademark, logo URL or product name without Authentic8's express written consent;
- Use the Authentic8 Service for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Authentic8 Service to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Authentic8 Service;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Authentic8 Service;
- Collect or store any personally identifiable information from Authentic8 Service from other users of the Authentic8 Service without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Authentic8 will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Authentic8 may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Authentic8 has no obligation to monitor your access to or use of the Authentic8 Service or to review or edit any User Content, but has the right to do so for the purpose of operating the Authentic8 Service, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Copyright Policy

Authentic8 respects copyright law and expects its users to do the same. Please see Authentic8's Copyright Policy at www.authentic8.com/copyright for further information.

Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of Authentic8 used herein are trademarks or registered trademarks of Authentic8. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the Federal laws of the United States without regard to its conflict of laws provisions.

Entire Agreement

These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitute the entire and exclusive understanding and agreement between Authentic8 and you regarding the Authentic8 Service, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Authentic8 and you regarding the Authentic8 Service.

Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Authentic8's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given: (i) by Authentic8 via email (in each case to the address that you provide) or (ii) by posting to your user account page. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

General

The failure of Authentic8 to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Authentic8. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

Contacting Authentic8

If you have any questions about these Terms, please contact Authentic8 at support@authentic8.com.



SUBSCRIPTION SERVICES AGREEMENT

This Agreement (this "**Agreement**") is entered into between Authentic8, Inc. ("**Authentic8**") and the company identified below ("**Ordering Activity**") and is effective as of the date signed by Authentic8 below (the "**Effective Date**").

Company:		Address:	
Contact:			

ORDER FORM

SUBSCRIPTION TERMS

Authentic8 Service:	Enter service description depending on use case: locked down, escape valve, Toolbox
Subscription Term:	12 months
Start Date:	ENTER THE DATE THAT THIS AGREEMENT IS SIGNED
Auto-renew:	N/A
Subscription Fees:	• \$__ per Authorized User per year • Subscription Fees represent direct fulfillment from Authentic8 to Ordering Activity, and are net of any Reseller or other fulfillment partner fees.
Authorized Users:	Enter contracted number
Additional Users:	\$__ per additional Authorized User per year
Annualized Contract Value:	
Access Terms:	Describe any conditions or restrictions around accessing Silo, the need for login credentials (if any), account sharing, number of devices etc.
Additional Terms:	Enter or say none.
Support Terms:	• Ordering Activity will provide direct first tier support to Authorized Users • Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm (Pacific Time), Monday-Friday (excluding national holidays). • Authentic8 Service availability will be governed by Exhibit A, Support Terms and Service Availability

This Agreement is subject to the attached terms and conditions, which is a part of this Agreement. By executing this Agreement, Ordering Activity agrees to be bound by those terms and conditions for the use of the Authentic8 Service. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

ORDERING ACTIVITY

By: _____
 Name: _____
 Title: _____
 Date: _____

AUTHENTIC8

By: _____
 Name: _____
 Title: _____
 Date: _____

Authentic8, Inc. | 201 San Antonio Circle, Suite 245, Mountain View, CA 94040 | www.authentic8.com **AUTHENTIC8 SERVICE**

TERMS AND CONDITIONS

The following terms and conditions govern the access and use of the cloud-based security service provided by Authentic8 (the “**Authentic8 Service**”) during the subscription term and any renewal term (the “**Subscription Term**”), as described in the attached order form to this Agreement (the “**Order Form**”).

1. AUTHORIZED USERS

1.1 Ordering Activity will determine the access controls for its employees and agents who are authorized to use the Authentic8 Service (“**Authorized Users**”) in connection with Ordering Activity’s account. The Authentic8 Service may only be accessed and used by Authorized Users from compatible devices and may require login credentials, the use of which will be governed by the

access terms in the associated Order Form. Ordering Activity is responsible for the activity occurring under its account by its Authorized Users (and their compliance with this Agreement).

1.2 Ordering Activity may from time to time replace an Authorized User who has terminated or changed their job status or function, or otherwise no longer requires use of the Authentic8 Service. Ordering Activity may add Authorized Users to its account at any time during the Subscription Term. Ordering Activity may only decrease the number of Authorized Users at the end of the Subscription Term (prior to the renewal). Authentic8 shall invoice Ordering Activity for any Authorized Users added during the Subscription Term in excess of the contracted number according to the terms set forth in the applicable Purchase Order.

2. AUTHENTIC8 SERVICE

2.1 Subject to the terms and conditions of this Agreement, Ordering Activity may access and use the Authentic8 Service for its business purposes during the Subscription Term and in accordance with the terms and limitations set forth in the Order Form.

2.2 In order to use the Authentic8 Service, each Authorized User must download the Authentic8 client software application (the "**Authentic8 App**") from the Authentic8 website or the applicable app store and install it on each device that will use the Authentic8 Service. Ordering Activity agrees to stay current with latest version of the Authentic8 App, and acknowledges that Authentic8 reserves the right to deprecate older versions of the Authentic8 App subject to notification. Ordering Activity will only allow the installation the Authentic8 App on compatible devices that are supported by Authentic8. Ordering Activity and its Authorized Users may not modify, alter, decompile or reverse engineer the Authentic8 App.

3. USE OF THE AUTHENTIC8 SERVICE

3.1 Ordering Activity, and/or its Authorized Users may provide Authentic8 with certain login and other account information for websites and web-based applications that Authorized Users will access through the Authentic8 Service ("**Account Access Information**"). Authorized Users may only use the Authentic8 Service to access accounts for which they are authorized by Ordering Activity to access and use. By providing Account Access Information, the account owner (whether Ordering Activity or its Authorized Users) permits Authentic8 to use (and, if elected, store) the Account Access Information on behalf of the account owner. The account owner can remove any Account Access Information stored with the Authentic8 Service at any time. In no event shall Account Access Information associated with Authorized Users personal websites be accessible or made available to Ordering Activity. Authentic8 will maintain administrative and technical safeguards to protect the security and confidentiality of the Account Access Information stored in the Authentic8 Service in accordance with applicable industry standards; however, Ordering Activity, and its Authorized Users are ultimately responsible for taking appropriate steps to maintain the security and confidentiality of its Account Access Information.

3.2 Ordering Activity, and its Authorized Users, agree not to: (1) use the Authentic8 Service or other than as authorized in this Agreement; (2) resell, sublicense, or otherwise make the Authentic8 Service available to any third party; (3) use the Authentic8 Service to support any activity that is illegal or that violates the proprietary rights of others; (4) interfere with or disrupt the integrity or performance of the Authentic8 Service or any websites or web-based applications; (5) deactivate, impair, or circumvent any security or authentication measures of the Authentic8 Service or any websites or web-based applications; (6) access the Authentic8 Service for purposes of monitoring its performance or functionality; or (7) authorize any third parties to do the above.

3.3 Authentic8 is not responsible or liable for: (1) the availability, accuracy, or security of any websites or web-based applications accessed through the Authentic8 Service, (2) the content, products, or services on or available from those websites or web-based applications; or (3) the deletion, non-delivery or failure to store or submit Account Access Information, or a loss of other information or settings on the websites and web-based applications accessed through the Authentic8 Service.

4. SUPPORT AND AVAILABILITY

4.1 During the Subscription Term, Authentic8 will provide technical support for the Authentic8 Service according to the terms set forth in **Exhibit A** ("Support Terms and Service Availability"). Authentic8 will make the Authentic8 Service available in accordance with **Exhibit A** and will use reasonable efforts to maintain the Authentic8 Service in a manner that minimizes errors and service interruptions.

5. SUBSCRIPTION FEES

5.1 Authentic8 shall invoice Ordering Activity for the fees or charges for the Authentic8 Service as specified in the Order Form ("**Subscription Fees**"). All Subscription Fees are quoted in United States dollars. Subscription Fees for the contracted number of Authorized Users will be invoiced and are due within 30 days from the date of invoice, or as otherwise stated in the GSA Schedule Contract or Purchase Order(s). Incremental service fees incurred by adding Authorized Users during the Subscription Term will be invoiced according to the terms set forth in the GSA Schedule Contract and the Purchase Order. All payment obligations are non-cancelable and once paid are nonrefundable.

5.2 Authentic8 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.3 Authentic8 reserves the right to modify the Subscription Fees or introduce new fees at its discretion by providing 30 days prior notice to Ordering Activity. Notwithstanding the foregoing, any changes to the Subscription Fees will not apply to Ordering Activity's current Subscription Term, and will instead take effect at the beginning of the renewal term.

5. RESERVED

6.

7. TERMINATION

7.1 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.2 Upon any expiration or termination of this Agreement, Ordering Activity's right to access and use the Authentic8 Service will automatically terminate, and Ordering Activity may not continue to access or use the Authentic8 Service. Authentic8 will have no liability for any costs, losses, damages, or liabilities arising out of or related to Authentic8's exercise of its termination rights under this Agreement. Any payment obligations as of the expiration or termination (or that relate to activity during the Subscription Term) will remain in effect. The obligations and provisions of Sections 8 through 12 will survive any expiration or termination of the Agreement.

8. PROPRIETARY RIGHTS

8.1 Authentic8 owns all right, title and interest in and to the Authentic8 Service and the Authentic8 App, including all worldwide intellectual property rights therein ("**Authentic8 IP**"). This Agreement does not convey any proprietary interest in or to any Authentic8 IP or rights of entitlement to the use thereof except as expressly set forth herein. Ordering Activity grants Authentic8 the right to use its name (and the corresponding trademark or logo) on Authentic8's website and marketing materials to identify Ordering Activity as a Ordering Activity; provided, however, that any such use must be pre-approved by Ordering Activity, which will not be unreasonably withheld or delayed. 8.2 Authentic8 will be free to use any suggestions, ideas, feedback, or recommendations provided by Customer regarding the Authentic8 Service or the Authentic8 App ("**Feedback**"), and by providing any Feedback, Customer grants Authentic8 a worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use and exploit that Feedback for any purpose and without any further obligation. Authentic8 acknowledges that the ability to use this Agreement and any Feedback received in advertising is limited by GSAR 552.203-71.

8.3 Each party understands that the other party may need to disclose certain non-public information relating to the disclosing party's business that is marked or identified as "confidential" at the time of disclosure ("**Confidential Information**") in connection with the use and/or performance of the Authentic8 Service. The receiving party agrees to take reasonable precautions to protect such Confidential Information, and to not disclose (without the disclosing party's prior authorization) to any third person any such Confidential Information. Confidential Information does not include any information that the receiving party can show: (1) is or becomes generally available to the public, or (2) was in its possession or was known prior to receipt from the disclosing party, or (3) was rightfully disclosed to it without restriction by a third party, or (4) was independently developed without use of any Confidential Information of the disclosing party. The receiving party may disclose Confidential Information if the disclosure is necessary to comply with a valid court order or subpoena (in which case the receiving party will, unless expressly prohibited by the terms of the court order or subpoena, promptly notify the disclosing party and cooperate with the disclosing party if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed). Authentic8 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

9. DISCLAIMERS

9.1 Authentic8 warrants that the Services will be performed substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8's control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING The Authentic8 Service and the Authentic8 App are provided "AS IS" and on an "AS AVAILABLE" basis. Authentic8 does not warrant that the Authentic8 Service will be provided without interruption or be completely error free. AUTHENTIC8 DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

9.2 Ordering Activity acknowledges that, despite the security features of the Authentic8 Service, no service can provide a completely secure mechanism of electronic transmission and that there are persons and entities that may attempt to breach Authentic8's security measures. Authentic8 will not be liable for any security breach (or other events) caused by circumstances outside of its reasonable control. Authentic8 is not responsible for any data or information that Ordering Activity, or its Authorized Users, download or access through the use of the Authentic8 Service. Ordering Activity assumes all risk from the use of the Authentic8 Service including any damage to its computer system or devices or the corruption or loss of its data and information when accessing or using the Authentic8 Service.

10. RESERVED

11. INDEMNIFICATION

11.1 Authentic8 will: (1) defend Ordering Activity against any third party suit, claim, action or demand (a "**Claim**") alleging that the Authentic8 Service infringes any copyright or trademark or misappropriates a trade secret of a third party; and (2) indemnify and hold Ordering Activity harmless from any final award of damages or settlement amount arising in connection with any such Claim.

11.2 The foregoing indemnity obligations are conditioned on Ordering Activity notifying Authentic8 promptly in writing of any actual or threatened Claim, Ordering Activity giving Authentic8 control of the defense thereof and any related settlement negotiations, and Ordering Activity cooperating and, at Authentic8's request and expense, assisting in such defense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

12. GENERAL

12.1 The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

12.2 This Agreement is governed by and construed in accordance with the Federal laws of the United States, without giving effect to the principles of conflict of law. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

12.3 Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent. Any attempt to assign this Agreement other than as permitted above will be null and void.

12.4 All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

12.5 This Agreement, together with the Underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitutes the complete and exclusive understanding and agreement between the parties regarding this subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to this subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

[END]

EXHIBIT A:

SUPPORT TERMS AND SERVICE AVAILABILITY

Capitalized terms not defined below will have the meaning ascribed to them in the Agreement. Additional terms used herein are defined below.

1. SUPPORT AND MAINTENANCE

1.1 Technical Support. Ordering Activity will provide direct first tier technical support directly to its Authorized Users. Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm, Pacific Time, Monday-Friday (excluding national holidays).

1.2 Maintenance. Authentic8 will make updates (error corrections, bug fixes, enhancements and/or improvements) to the Authentic8 Service on an ongoing basis. Except in the case of emergencies, Authentic8 will schedule maintenance during appropriate, non-peak usage hours (typically between 10pm on Fridays and 12pm on Sundays, Pacific Time) and to the extent possible will provide advance notice of any planned service disruption.

1.3 Reporting Process. Only Ordering Activity's Account administrator(s) may contact Authentic8's technical support personnel. In connection with submitting a problem report, Ordering Activity must: (i) notify Authentic8 promptly of problems with the Authentic8 Service, and provide Authentic8 with any documentation available regarding the error sufficient to allow Authentic8 to reproduce the error; and (ii) provide Authentic8 with reasonable assistance, as requested, to troubleshoot the problem.

2. SERVICE LEVEL

2.1 Availability. The Authentic8 Service will be available 99.9% of the time per month, except for any scheduled maintenance or Service Interruptions ("**Uptime Availability**"). The Authentic8 Service (or a portion of the Authentic8 Service) may be unavailable at certain times, for any unanticipated or unscheduled emergency maintenance or unavailability as a result of (i) circumstances beyond Authentic8's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or (ii) Internet third party service provider failures, delays, or denial of service attacks ("**Service Interruptions**").

2.2 Remedies. If the Authentic8 Service does not meet the Uptime Availability in any given calendar month (excluding any scheduled maintenance or Service Interruptions), then Authentic8 will credit Ordering Activity a percentage of the Subscription Fees for that month as follows:

Service Availability	Service Credit
99.5% - 99.9%	20%
99% - 99.5%	40%
<99%	100%

Service credits must be requested in writing within 10 business days after the month following such service level unavailability. This credit will be applied against future Subscription Fees. If the Authentic8 Service does not meet the Uptime Availability for two (2) consecutive months in any three (3) month period, or four (4) times in any twelve (12) month period, Ordering Activity may terminate the Agreement and Authentic8 will refund the unused portion of the Subscription Fees that Ordering Activity had paid for the Authentic8 Service for the remainder of the Subscription Term. This section states Ordering Activity's sole and exclusive remedy for the unavailability of the Authentic8 Service.

Avizia
12018 Sunrise Valley Drive
Reston, VA 20191

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

AVIZIA

AVIZIA LICENSE, WARRANTY AND SUPPORT TERMS

License. Conditioned upon compliance with the terms and conditions of this Attachment A, Contractor grants to Ordering Activity a nonexclusive and nontransferable license to use for Ordering Activity's internal business purposes the Software and the Documentation for which Ordering Activity has purchased through the issuance of a Purchase Order. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by an Approved Source with the Software in any manner (including on CD-Rom, or on-line). In order to use the Software, Ordering Activity may be required to input a registration number or product authorization key and register Ordering Activity's copy of the Software online at Avizia's website to obtain the necessary license key or license file. Ordering Activity's license to use the Software shall be limited to, and Ordering Activity shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in this Attachment A or in the applicable purchase order which has been accepted by Contractor and for which Ordering Activity has paid to Contractor the required license fee (the "Purchase Order").

Unless otherwise expressly provided in the Documentation, this Attachment A, the Purchase Order, or the GSA Schedule Contract, Ordering Activity shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation, Purchase Order, or Schedule Contract permits installation on non-Avizia equipment) for communication with Avizia equipment owned or leased by Ordering Activity and used for Ordering Activity's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Avizia retains ownership of all copies of the Software and Documentation. Ordering Activity acknowledges that the Software and Documentation contain trade secrets of Avizia or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under this Attachment A, the Purchase Order, or the Schedule Contract, Ordering Activity shall only use the Software in connection with the use of Avizia equipment purchased by the Ordering Activity from Contractor and Ordering Activity shall have no right, and Ordering Activity specifically agrees not to:

- (i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Avizia relicensing/transfer policy then in force), or use the Software on Avizia equipment not purchased by the Ordering Activity from Contractor or on secondhand Avizia equipment, and Ordering Activity acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction or except to the extent that Avizia is legally required to permit such specific activity pursuant to any applicable open source license;
- (iv) publish any results of benchmark tests run on the Software;
- (v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Avizia; or
- (vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Avizia. Ordering Activity shall implement reasonable security measures to protect such trade secrets. However, Ordering Activity may disclose the trade secrets or other confidential information in accordance with law or court order.

To the extent required by applicable law, and at Ordering Activity's written request, Contractor through Avizia shall provide Ordering Activity with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Contractor's applicable GSA fee, if any. Ordering Activity shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Contractor through Avizia makes such information available.

Software, Upgrades and Additional Copies. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ATTACHMENT A: (1) ORDERING ACTIVITY HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS ORDERING ACTIVITY, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE GSA PRICE TO CONTRACTOR FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO AVIZIA EQUIPMENT SUPPLIED BY CONTRACTOR FOR WHICH ORDERING ACTIVITY IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY. NOTHING CONTAINED HEREIN SHALL LIMIT THE GOVERNMENT'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS.

Proprietary Notices. Ordering Activity agrees to maintain and reproduce all copyright, proprietary, and other notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Attachment A, the Purchase Order, or the Schedule Contract, Ordering Activity shall not make any copies or duplicates of any Software without the prior written permission of Avizia.

U.S. Government End User Purchasers. The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Ordering Activity may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement.

Limited Warranty

Subject to the limitations and conditions set forth herein, Contractor warrants that commencing from the date of shipment to Ordering Activity, and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Contractor through Avizia is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from Contractor by an Ordering Activity who is the first registered end user. Ordering Activity's remedy and the entire liability of Contractor and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Contractor's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Contractor supplying the Software to Ordering Activity, within the warranty period. Contractor supplying the Software to Ordering Activity may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Contractor warrant that the Software is error free or that Ordering Activity will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Contractor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Restrictions. This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor through Avizia, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; (f) any Software not posted on Avizia's Software Center; (g) any Software that Contractor expressly provides on an "AS IS" basis on Avizia's Software Center; (h) any Software for which an Approved Source does not receive a license fee; and (i) Software supplied by any third party which is not an Approved Source.

DISCLAIMER OF WARRANTY

EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CONTRACTOR, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO IN THE "LIMITED WARRANTY" SECTION ABOVE. BECAUSE SOME STATES

OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY IN SUCH STATES. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

Avizia and the Avizia logo are trademarks or registered trademarks of Avizia and/or its affiliates in the U.S. and other countries.

Third-party trademarks mentioned are the property of their respective owners. The use of the word partner does not imply a partnership relationship between Avizia and any other company. (1110R)

Hardware Warranty

Contractor provides a warranty for its products, ensuring they are free from physical defects in materials and workmanship for a period of 12 months from the date of shipment to Ordering Activity. This First Year Warranty applies only to products purchased from Contractor. The following terms and conditions apply to the First Year Warranty:

- Warranty covers all components which come with the products, except cables.
- The normal time for warranty repair is 15 factory working days, excluding shipping time.
- The normal time for warranty repair is 15 factory working days, excluding shipping time.
- The sending party is responsible for shipping to the repair center.
- Avizia covers repair of faulty unit and return shipment.

Barracuda Networks, Inc.
3175 S. Winchester Blvd.
Campbell, CA 95008

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BARRACUDA NETWORKS

BARRACUDA NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

Limited Hardware Warranty

1. Contractor warrants that commencing from the date of delivery to Ordering Activity, and continuing for a period of one (1) year: (a) its products (excluding any software) will be free from material defects in materials and workmanship under normal use; and (b) the software provided in connection with its products, including any software contained or embedded in such products will substantially conform to Contractor published specifications in effect as of the date of manufacture. Except for the foregoing, the software is provided as is. In no event does Contractor warrant that the software is error free or that Ordering Activity will be able to operate the software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack. The limited warranty extends only to Ordering Activity the original buyer of the Barracuda Networks product and is non-transferable.
2. **Remedy.** Ordering Activity's remedy and the liability of Contractor under this limited warranty shall be, at Contractor or its service centers option and expense, the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may be refurbished or new equipment substituted at Contractor's option. Contractor obligations hereunder are conditioned upon the return of affected articles in accordance with Contractor then-current Return Material Authorization ("RMA") procedures. All parts will be new or refurbished, at Contractor's discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of Contractor. In connection with warranty services hereunder, Contractor may at its discretion modify the hardware of the product at no cost to Ordering Activity to improve its reliability or performance. The warranty period is not extended if Contractor repairs or replaces a warranted product or any parts. Contractor may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.
3. **Exclusions and Restrictions.** This limited warranty does not apply to Barracuda Networks products that are or have been (a) marked or identified as "sample" or "beta," (b) loaned or provided to Ordering Activity at no cost, (c) sold "as is," (d) repaired, altered or modified except by Contractor, (e) not installed, operated or maintained in accordance with instructions supplied by Contractor, or (f) subjected to abnormal physical or electrical stress, misuse, negligence or to an accident.

EXCEPT FOR THE ABOVE WARRANTY, CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO BARRACUDA NETWORKS PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE WARRANTY, BARRACUDA NETWORKS' PRODUCTS AND THE SOFTWARE ARE PROVIDED "AS-IS" AND CONTRACTOR DOES NOT WARRANT THAT ITS PRODUCTS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE OR ERROR FREE, OR THAT ANY ERRORS IN ITS PRODUCTS OR THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, CONTRACTOR DOES NOT WARRANT THAT BARRACUDA NETWORKS PRODUCTS, THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH BARRACUDA NETWORKS PRODUCTS WILL BE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

Barracuda Networks Software License Terms

1. The software and documentation, whether on disk, in flash memory, in read only memory, or on any other media or in any other form (collectively "Barracuda Software") is licensed, not sold, to Ordering Activity by Contractor for use only under the terms of this Attachment A, and Contractor reserves all rights not expressly granted to Ordering Activity. The rights

granted are limited to Contractor's intellectual property rights in the Barracuda Software and do not include any other patent or intellectual property rights. Ordering Activity owns the media on which the Software is recorded but Contractor retains ownership of the Software itself. If Ordering Activity has not completed a purchase of the Software and made payment for the purchase, the Software may only be used for evaluation purposes and may not be used in any production capacity. Furthermore the Software, when used for evaluation, may not be secure and may use publicly available passwords.

2. Permitted License Uses and Restrictions. If Ordering Activity has purchased a Barracuda Networks hardware product, this Attachment A allows Ordering Activity to use the Software only on the single Barracuda labeled hardware device on which the software was delivered. Ordering Activity may not make copies of the Software. Ordering Activity may not make a backup copy of the Software. If Ordering Activity has purchased a Barracuda Networks Virtual Machine Ordering Activity may use the software only in the licensed number of instances of the licensed sizes and Ordering Activity may not exceed the licensed capacities. Ordering Activity may make a reasonable number of backup copies of the Software. If Ordering Activity have purchased client software Ordering Activity may install the software only on the number of licensed clients. Ordering Activity may make a reasonable number of backup copies of the Software. For all purchases Ordering Activity may not modify or create derivative works of the Software. Ordering Activity may not make the Software available over a network where it could be utilized by multiple devices or copied. Unless otherwise expressly provided in the documentation, Ordering Activity's use of the Software shall be limited to use on a single hardware chassis, on a single central processing unit, as applicable, or use on such greater number of chassis or central processing units as Ordering Activity may have paid Contractor the required license fee; and Ordering Activity's use of the Software shall also be limited, as applicable and set forth in Ordering Activity's purchase order or in Contractor's GSA product catalog, user documentation, or web site, to a maximum number of (a) seats (i.e. users with access to install Software), (b) concurrent users, sessions, ports, and/or issued and outstanding IP addresses, and/or (c) central processing unit cycles or instructions per second. Ordering Activity's use of the Software shall also be limited by any other restrictions set forth in Ordering Activity's purchase order or in Contractor's GSA product catalog, user documentation or Web site for the Software. The BARRACUDA SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, LIFE SUPPORT MACHINES, OR OTHER EQUIPMENT IN WHICH FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY EXPRESSLY AGREES NOT TO USE IT IN ANY OF THESE OPERATIONS.
3. Ordering Activity may not transfer, rent, lease, lend, or sublicense the Software or allow a third party to do so. ORDERING ACTIVITY MAY NOT OTHERWISE TRANSFER THE SOFTWARE OR ANY OF ORDERING ACTIVITY'S RIGHTS AND OBLIGATIONS UNDER THIS ATTACHMENT A. Ordering Activity agree that Ordering Activity will have no right and will not, nor will it assist others to: (i) make unauthorized copies of all or any portion of the Software; (ii) sell, sublicense, distribute, rent or lease the Software; (iii) use the Software on a service bureau, time sharing basis or other remote access system whereby third parties other than Ordering Activity can use or benefit from the use of the Software; (iv) disassemble, reverse engineer, modify, translate, alter, decompile or otherwise attempt to discern the source code of all or any portion of the Software; (v) utilize or run the Software on more computers than Ordering Activity has purchased license to; (vi) operate the Software in a fashion that exceeds the capacity or capabilities that were purchased by Ordering Activity.
4. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE BARRACUDA SOFTWARE IS AT ORDERING ACTIVITY'S OWN RISK AND THAT THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, AND ACCURACY IS WITH ORDERING ACTIVITY. THE BARRACUDA SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE BARRACUDA SOFTWARE, EITHER EXPRESSED OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR ANY APPLICATION, OF ACCURACY, AND OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THE CONTINUED OPERATION OF THE SOFTWARE, THAT THE PERFORMANCE WILL MEET ORDERING ACTIVITY'S EXPECTATIONS, THAT THE FUNCTIONS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS, THAT THE OPERATION WILL BE ERROR FREE OR CONTINUOUS, THAT CURRENT OR FUTURE VERSIONS OF ANY OPERATING SYSTEM WILL BE SUPPORTED, OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION GIVEN BY CONTRACTOR OR AUTHORIZED CONTRACTOR REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE BARRACUDA SOFTWARE PROVE DEFECTIVE, ORDERING ACTIVITY ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. FURTHERMORE CONTRACTOR SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE RESOURCES, ABNORMAL OPERATING CONDITIONS (IN PARTICULAR DEVIATIONS FROM THE INSTALLATION CONDITIONS) AS WELL AS BY TRANSPORTATION DAMAGE. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or ATTACK. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT ORDERING ACTIVITY WILL PROVIDE AN UNLIMITED PERPETUAL ZERO COST LICENSE TO CONTRACTOR FOR ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS WHICH ORDERING ACTIVITY EITHER OWN OR CONTROL THAT ARE UTILIZED IN ANY BARRACUDA PRODUCT.
5. Content Restrictions. ORDERING ACTIVITY MAY NOT (AND MAY NOT ALLOW A THIRD PARTY TO) COPY, REPRODUCE, CAPTURE, STORE, RETRANSMIT, DISTRIBUTE, OR BURN TO CD (OR ANY OTHER MEDIUM) ANY

COPYRIGHTED CONTENT THAT ORDERING ACTIVITY ACCESS OR RECEIVE THROUGH USE OF THE PRODUCT CONTAINING THE SOFTWARE. ORDERING ACTIVITY ASSUME ALL RISK AND LIABILITY FOR ANY SUCH PROHIBITED USE OF COPYRIGHTED CONTENT. Ordering Activity agrees not to publish any benchmarks, measurements, or reports on the product without Contractor's written express approval.

6. Trademarks. Certain portions of the product and names used in this Attachment A, the Software and the documentation may constitute trademarks of Barracuda Networks. Ordering Activity is not authorized to use any such trademarks for any purpose.
7. Collection of Data. Ordering Activity agrees to allow Contractor through Barracuda Networks to collect information ("Statistics") from the Software in order to fight spam, virus, and other threats as well as optimize and monitor the Software. Information will be collected electronically and automatically. Statistics include, but are not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis, capacity and usage, websites not categorized, fingerprints of emails, and other statistics. Ordering Activity's data will be kept private and will only be reported in aggregate by Barracuda Networks.
8. Subscriptions. Software updates and subscription information provided by Barracuda Energize Updates or other services may be necessary for the continued operation of the Software. Ordering Activity acknowledge that such a subscription may be necessary. Furthermore some functionality may only be available with additional subscription purchases. Obtaining Software updates on systems where no valid subscription has been purchased or obtaining functionality where subscription has not been purchased is strictly forbidden and in violation of this Attachment A. All initial subscriptions commence at the time of activation and all renewals commence at the expiration of the previous valid subscription. Unless otherwise expressly provided in the documentation, Ordering Activity shall use the Energize Updates Service and other subscriptions solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Barracuda Networks equipment) for communication with Barracuda Networks equipment owned or leased by Ordering Activity. All subscriptions are non-transferrable. Contractor makes no warranty that subscriptions will continue un-interrupted.
9. Time Base License. If Ordering Activity's Software purchase is a time based license Ordering Activity expressly acknowledge that the Software will stop functioning at the time the license expires.
10. Support. Telephone, email and other forms of support will be provided to Ordering Activity if you have purchased a product that includes support. The hours of support vary based on country and the type of support purchased. Barracuda Networks Energize Updates typically include Basic support.
11. Changes. Contractor through Barracuda Networks reserves the right at any time not to release or to discontinue release of any Software or Subscription and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Software or Subscriptions.
12. Open Source Licensing. Barracuda Networks products may include programs that are covered by the GNU General Public License (GPL) or other Open Source license agreements, in particular the Linux operating system. It is expressly put on record that the Software does not constitute an edited version or further development of the operating system. These programs are copyrighted by their authors or other parties, and the authors and copyright holders disclaim any warranty for such programs. Other programs are copyright by Contractor. Contractor through Barracuda Networks makes available the source code used to build Barracuda products available at source.barracuda.com. This directory includes all the open source programs that are distributed on the Barracuda products. Obviously not all of these programs are utilized, but since they are distributed on the Barracuda product Contractor through Barracuda is required to make the source code available.

Barracuda Instant Replacement Service

Contractor through Barracuda Networks shall provide the instant replacement services described below commencing on the date of delivery of the Barracuda Networks, Inc. product for which the Instant Replacement Service is purchased (Product) to the Ordering Activity, and continuing for a period of one (1) year, three (3) years, or five (5) years depending on the Service purchased (Instant Replacement Service Period). During the Instant Replacement Service Period, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a new Product within twenty-four (24) hours if Ordering Activity resides in the United States. For Ordering Activities residing outside the United States, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a replacement Product via express mail within one business day.

Upon requesting a replacement Product, Ordering Activity must return the original Product to Contractor through Barracuda Networks. Ordering Activity must return the original Product to Barracuda Networks within 30 days after shipment of the replacement Product. Barracuda Networks will pay shipping costs to ship the replacement Product to Ordering Activity. The Ordering Activity is responsible for shipping costs back to Barracuda Networks of the covered unit.

This Instant Replacement Service Period is not extended if Contractor through Barracuda Networks replaces a Product. Barracuda Networks may change the availability of Instant Replacement Service programs, at its discretion, but any changes will not be retroactive.

This Instant Replacement Service extends only to the original Ordering Activity of the Product and is non-transferable. Instant Replacement must be purchased within 60 days of initial order of the system to be covered.

Ordering Activity's remedy and the liability of Contractor under this Instant Replacement Service and during the Instant Replacement Service Period will be shipment of a replacement Product within the time period and according to the replacement process set forth above and on the Barracuda Networks Web Site or literature accompanying the Product, or a refund of the purchase price if the Product is returned to Contractor through Barracuda Networks.

Restrictions. This Instant Replacement Service does not apply if (a) the Product has been altered, except by Contractor through Barracuda Networks, (b) the Product has not been installed, operated, repaired, or maintained in accordance with instructions, (c) the Product has been subjected to abnormal physical or electrical stress, misuse, or negligence (d) the Product has an altered or missing serial number; or (e) Contractor has not received payment for the Product or (f) the Product is physically damaged or (g) a Ordering Activity must have current EU to take advantage of IR.

Renewal. At the end of the Instant Replacement Service Period, Ordering Activity may have the option to renew the Instant Replacement Service at then-current GSA price, provided such Instant Replacement Service is available. All initial subscriptions commence at the time of sale of the unit and all renewals commence at the expiration of the previous valid subscription.

DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS INSTANT REPLACEMENT SERVICE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO ORDERING ACTIVITY. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

Barracuda Energize Updates

Barracuda Energize Updates provide Ordering Activity's Barracuda Networks product with protection from the latest Internet threats. The team at Contractor through Barracuda Central continuously monitors the Internet for new trends in network security threats and develops strategies to mitigate those threats. Energize Updates deliver the latest definitions most appropriate to Ordering Activity's product -- spam, virus, content categories, spyware filter, intrusion prevention, IM protocols, policies, security updates, attacks and document formats. These updates are sent out hourly or more frequently if needed, to ensure that Ordering Activity always have the latest and most comprehensive protection.

Barracuda Energize Updates subscriptions need to be purchased with any Barracuda Networks product to provide complete protection from the latest Internet threats. Subscriptions can be purchased or renewed for hardware appliances for up to 5 years from purchase of product. In addition to definition updates, Energize Updates subscriptions also provide:

- Basic Support, which includes email support 24x7 and phone support between the hours of 9 a.m. and 5 p.m. Monday through Friday in the US (Pacific Time). Note that Contractor through Barracuda Networks Technical Support will take and respond to support calls 24x7 from Basic Support customers if we are not helping other customers.
- Firmware Maintenance which includes new firmware updates with feature enhancements and bug fixes for up to 4 years from purchase of product.
- Security Updates to patch or repair any security vulnerabilities for up to 5 years from purchase of product.
- Optional participation in the Barracuda Early Release Firmware program.

Bay Dynamics, Inc.
595 Market Street, Suite 1300
San Francisco, CA 94105

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

BAY DYNAMICS, INC.

BAY DYNAMICS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1 Definitions.

1.1 "Client Content" means any data, information or material (including the Security Data) that Client delivers to Bay Dynamics.

1.2 "Deliverables" means the materials that are developed pursuant to a Statement of Work attached to an Order Form.

1.3 "Bay Dynamics Materials" means all software, tools, templates, processes, methodologies, techniques, algorithms, ideas, know-how, documentation, technical information, technology, material and other intellectual property used by Bay Dynamics in the Software or to provide the Services.

1.4 "Initial Term" means the first period during which a Subscription is in effect and lasts for the period specified in the relevant Order Form.

1.5 "Live Date" means the date on which billing for a Subscription begins, and is the date on which the Software is made electronically available to the Client.

1.6 "Order Form" means an ordering document issued by Client which specifies Software included in a Subscription, or the Professional Services or Deliverables to be provided Client by Bay Dynamics.

1.7 "Professional Services" means services that Bay Dynamics provides to or on behalf of Client, but which are not part of a Subscription. Professional Services may include standard services, such as installation or configuration of the Software, or ad hoc services that are described in a Statement of Work attached to the Order Form.

1.8 "Renewal Term" means an extension of the Term beyond the Initial Term. Unless otherwise specified in the Order Form, each Renewal Term lasts for one (1) year.

1.9 "Security Data" means information collected from Client's security tools.

1.10 "Software" means the Bay Dynamics software that is identified in an Order Form as being included within a Subscription, and normally includes the Bay Dynamics core analytics engine and one or more connectors to Client's security tools.

1.11 "Statement of Work" means a document attached to an Order Form that describes Professional Services to be performed by Dynamics

1.12 "Subscription" means Client being authorized to use for a defined period one or more components of Bay Dynamics' Software, as specified on an Order Form.

1.13 "Term" means the period during which an Order Form is in effect, including the Initial Term and any Renewal Terms.

2 Compliance.

Both Client and Bay Dynamics will comply with all applicable federal, state and local laws and regulations, including, without limitation, all laws and regulations regarding data privacy.

3 Reserved.

4 Reserved.

5 Warranties.

5.1 Bay Dynamics' Warranties. Bay Dynamics warrants that (i) during the term of a Subscription, the Software will perform and be available materially in accordance with the accompanying documentation; and (ii) Professional Services will be performed in accordance with the requirements of the relevant Order Form.

5.2 Client's Warranties. Client warrants that it has obtained all necessary rights, licenses, consents, waivers and permissions from employees and others to allow Bay Dynamics to manage Security Data and otherwise to use any data provided to or collected by the Software.

5.3 Disclaimer. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING WARRANTIES ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE. BAY DYNAMICS DOES NOT WARRANT THAT THE OPERATION OF, ACCESS TO OR USE OF ALL OR ANY PART OF THE SOFTWARE OR PROFESSIONAL SERVICES WILL BE CONTINUOUS, UNINTERRUPTED OR ERROR FREE.

5.4 Remedy. THE CLIENT ACKNOWLEDGES THAT IF THE RESULTS OBTAINED FROM THE SOFTWARE OR THE PROFESSIONAL SERVICES ARE INACCURATE, INCOMPLETE OR ERRONEOUS DUE TO THE FAULT OF BAY DYNAMICS, BAY DYNAMICS' SOLE OBLIGATION WILL BE TO EITHER CORRECT THE SOFTWARE OR REPERFORM THE RELEVANT PROFESSIONAL SERVICES, AS APPLICABLE AND AT NO ADDITIONAL CHARGE.

6 Reserved.

7 Reserved.

8 Intellectual Property.

8.1 Bay Dynamics Materials. Bay Dynamics Materials are and will remain Bay Dynamics' property. Nothing herein will be construed to assign or transfer to Client any intellectual property rights in the Bay Dynamics Materials.

8.2 Client Content. Client will retain rights to the Client Content.

8.3 Deliverables. Upon payment in full of all fees owed to Bay Dynamics related to the Deliverables, the Deliverables will be included within the definition of "Software" included within Client's then-current Subscription.

9 Reserved.

10 Security Data.

10.1 Restrictions. Bay Dynamics will take reasonable steps to protect the Security Data from unauthorized disclosure.

10.2 Aggregated Data. Bay Dynamics may use, store and distribute the results of its analysis of the Security Data in an aggregated form for comparative, meta-analysis, and development purpose, for example to identify new cyber-attack vectors. Bay Dynamics will not disclose any aggregated Security Data that could identify Client.

11 Reserved. General.

BlueCat Networks (USA), Inc.
4101 Yonge Street, Suite 502
Toronto, Ontario, Canada M2P 1N6

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

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

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- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BLUECAT NETWORKS (USA), INC.

BLUECAT NETWORKS (USA), INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

For this Attachment A the following terms shall have the meanings given below:

1.1 "Authorized Contacts" mean those Ordering Activity employees or agents who have been authorized to submit Cases to Contractor hereunder, including the Primary Administrator.

1.2 "Care" means BlueCat Network's (BCN's) secure online self-service support mechanism, which provides a structured means of reporting and enquiring about Cases, and which provides access to a searchable knowledge base, support library, technical documentation and technical bulletins relating to our Product(s).

1.3 "Case" means a failure of the Product to conform to its Documentation, or an inquiry from a Ordering Activity relating to the operation or use of the Product.

1.4 "Error(s)" shall mean a fault in the Product which results in it failing to materially perform the functions specified in BCN's published applicable end user manual.

1.5 "Expiry Date" means the last day of the term of the then current contract for purchase of Support Services.

1.6 "Featurepack" means a group of features that have been unit-tested and regression-tested by BCN and released to add functionality to an existing version of the Software.

1.7 "Fixpack" means a group of fixes released by BCN that has been unit-tested and regression-tested by BCN and that is intended to provide a permanent Resolution for one or more Case(s).

1.8 "Hardware System" means the physical appliance (if any) purchased hereunder upon which the software licensed to Ordering Activity resides.

1.9 "Hotfix" means a fix or a group of fixes that BCN has unit-tested, but not regression-tested, and that is intended to provide a temporary, customer(s)-specific Resolution for a Case until Contractor, through BCN, provides a corresponding Fixpack.

1.10 "Implementation" means usage of the Product with Ordering Activity data in a production or test environment for the purposes of using the Product in production.

1.11 "Installation" means for physical Product, removal from the shipping boxes, and connection to network and power, and for virtual Product, installation on a server designated by Ordering Activity.

1.12 "Instance" means an object code only copy of the software Product downloaded as a file and installed on Ordering Activity's virtual server, in accordance with, and subject to, these Terms.

1.13 "Instance Limits" means both: (a) the number of instances of the Product which Ordering Activity has the right to create, pursuant to the Order, subject to payment and compliance with this Agreement; and (b) restrictions on the use of each instance.

1.14 "Key" means a license key consisting of a series of numbers and/or letters provided by Contractor, through BCN, to Ordering Activity to permit Ordering Activity to activate and use a defined (or unlimited) number of instances of the Product (each a Virtual Instance), as specified in Ordering Activity's Order, when passed to a verification function in the Product, which manipulates the key sequence according to a mathematical algorithm to verify compliance.

1.15 "Maintenance Release" means a release of the software released at regular intervals, which may not include new features, but may include Featurepacks, Fixpacks and/or Hotfixes.

1.16 "Major Release" means a release of the software that is signified by a change in the number to the left of the decimal point (e.g., version 5.x to 6.x).

1.17 "Minor Release" means a release of the software that is signified by a change in the number to the right of the decimal place (e.g., version x.1 to x.2).

1.18 "Order" means a written (including electronic) purchase order relating to the Product and/or services procured.

1.19 "Party" means either Ordering Activity or Contractor.

1.20 "Primary Administrator" means an Authorized Contact who shall serve as the principal Ordering Activity liaison for all technical Support Services Cases.

1.21 "Product(s)" mean the appliances (and any standalone software) acquired by Ordering Activity pursuant to the Order, and BCN's then applicable version of the end user manual.

1.22 "Product Warranty Period" means thirty (30) days from delivery (if not installed by Contractor, through BCN) or from Installation (if installed by Contractor, through BCN).

1.23 "Resolution" means, with respect to a reported Case, correction or reasonable mitigation of the Case, and which may, dependent on the nature of the Case, be accomplished by means of one or more of the following:

- a. direct telephone support from Contractor through BCN;
- b. the recommendation by Contractor through BCN of a Workaround (which may include a Hotfix) reasonably acceptable by the Ordering Activity;
- c. the Delivery by Contractor through BCN of a patch or similar direct code correction to the underlying software;
- d. the Delivery by Contractor through BCN of a new Maintenance Release, Minor Release or Major Release version(s) of the Software, or
- e. the Delivery of a replacement part or unit for the Hardware identified as the cause of the Case.

1.24 "Severity Code" means the system impact of a Case, as established in accordance with Table A1 below.

1.25 "Site" means the destination location specified in the accepted Order (or in the case of downloaded product means the geographic location where the computing device upon which the Product is downloaded, is physically locate, as specified in the accepted Order).

1.26 "Support Handbook" means a BCN document that describes standard processes and best practices by which Ordering Activity accesses technical Support Services hereunder, as updated by BCN from time to time.

1.27 "Support Desk" means the technical help desk, from which Contractor through BCN shall provide Case support to the Ordering Activity.

1.28 "Support Services" means technical support, and, if purchased by Ordering Activity, Technical Account Management, in addition to any and all other services or entitlements provided hereunder.

1.29 "Support Services Start Date" means the commencement date of Support Services provided hereunder, as described in the applicable Order.

1.30 "Term" means: (a) perpetual for the license of a Product acquired for fair market value, unless a shorter period has been agreed upon by the Parties,; and (b) the designated term of the Support Services purchased by Ordering Activity in an Order; unless in any such case earlier terminated as permitted hereunder.

1.31 "Updates" means Major Releases, Minor Releases and Maintenance Releases.

1.32 "Workaround" means a process or procedure, or series thereof that allows the effects of a Case to be mitigated or overcome by Ordering Activity. A Workaround may be achieved by Ordering Activity by a number of possible methods, including, without limitation:

- a. data manipulation;
- b. variation of a standard process;
- c. implementation of a manual process.

2. SOFTWARE LICENSE

2.1 The Product is comprised of software, or includes embedded software. Subject to the terms hereof, a non-exclusive, worldwide, non-transferable, non-sublicensable, license or sublicense of the object code version only, for use within the Product is granted by

Contractor, through BCN, to Ordering Activity, during the Term, but solely for use within the hardware versions of Product (if applicable), and in any event only for Ordering Activity's internal needs in connection with its business.

2.2 Except as otherwise provided herein, Ordering Activity will not: (i) modify, translate or copy the software or any Product except, where the Product is software licensed independent of an appliance, to make one copy of the software solely for each of backup and archival purposes; (ii) use the Product except as is contemplated by the end user manual documentation; (iii) reverse engineer, create derivative works based on, decompile or disassemble the software or the Products (except to the extent applicable law overrides); (iv) use the Product, except as authorized herein; (v) rent, or lease; (vi) use the software on equipment not provided by Contractor; or (vii) remove any proprietary notice, labels, or marks on the software or Product, documentation, and containers. Ordering Activity will take all reasonable precautions to prevent third parties from using the Products or any part thereof in any way that would constitute a breach hereof.

2.3 Ordering Activity shall not use the Products until it reviews and agrees to any license for third party software within the Product, required by its supplier, of which Contractor advises Ordering Activity in advance of Ordering Activity's acquisition. Contractor bears no responsibility whatsoever respecting third party software requiring a separate license, including without limitation responsibility to enhance the Product to achieve or maintain compatibility with such third party software or enhancements thereto, or to maintain third party software. Contractor bears no responsibility whatsoever respecting compatibility of the Product with, or capacity limitations of, third party products not provided by Contractor, including without limitation responsibility to enhance the Product to achieve or maintain compatibility with such third party products or enhancements thereto, or to maintain third party products.

3. WARRANTIES

3.1 Contractor warrants that: (A) it shall provide to Ordering Activity unencumbered good title to the hardware components (if applicable), and a valid license for the software components, of the Product; (B) the Product and any services shall comply with all applicable governmental regulations; (C) it is a duly authorized licensor of the software which it purports to license, and owner of the hardware sold, pursuant hereto; (D) during the Product Warranty Period the Product shall: (i) be free from material defects in materials and workmanship; and (ii) be free from material Errors; (E) it has taken commercially reasonable steps, in keeping with currently available technology and industry standards, to eliminate any codes, commands or instructions, including viruses, time bombs, worms, and trojan horses, that may, or may be used to, access, alter, delete, damage or disable the Product, save and except that Ordering Activity acknowledges that it has acquired a time limited license, for the applicable license Term, after which time Contractor, through BCN, has the right to disable the Product, or after which time the Product may not function; and (F) if Ordering Activity has provided an Order to Contractor for Installation, Implementation, training or Support Services, the applicable services will be performed: (i) in a professional manner using an adequate number of qualified, experienced representatives familiar with the Products, and (ii) pursuant to the applicable requirements per the Order. Ordering Activity agrees to use the Products only for the purposes, and in the manner, stipulated in the end user manual.

3.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, COMMON LAW, STATUTORY OR OTHERWISE, RELATING TO THE PRODUCTS, OR SERVICES INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE PARTIES HEREBY EXPRESSLY EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. Warranties herein will not extend to any Product: (A) operated with software or hardware unapproved in writing by Contractor through BCN; (B) subjected to service not authorized by Contractor through BCN; or (C) used other than in accordance with the end user manual provided by Contractor through BCN. Where Contractor reasonably believes the defects for which warranty service has been claimed arise from use of non-approved software, hardware or service, or use other than in accordance with the end user manual, Ordering Activity shall bear all costs associated with Product repair and replacement including without limitation, parts, labor, shipping and insurance charges and Contractor travel and accommodations costs and reasonable compensation for Contractor's time. Contractor does not warrant the Products will satisfy Ordering Activity's needs or operate error or interruption free, or that all errors will be detected and corrected.

3.3 REPLACEMENT OR REFUND. If, during the Product Warranty Period, the Product fails to operate in accordance with the warranty, and the failure is reproducible, Ordering Activity shall notify Contractor, via telephone, of Product failure and obtain a Return Material Authorization ("RMA") number. All warranty claims, correspondence and warranty service requests must specify both the model name and serial number of the Products (and verified individual license key number if applicable) and are to be directed to Contractor pursuant to BCN's RMA procedure. During the Product Warranty Period, Contractor, through BCN shall (at Contractor's option), at no additional charge to Ordering Activity, repair or replace any defective hardware or software returned by Ordering Activity to or (at Contractor's option), refund the price for that unit.

4. IP OWNERSHIP

4.1 All worldwide propriety rights respecting intellectual property in any form or on any media related to BCN's intellectual property in or derived from any BCN Products supplied by Contractor to Ordering Activity hereunder, including the structure, organization and design of hardware (if any) and software included as part of the Products, are and will remain the proprietary and valuable intellectual property of BCN and/or its licensors or suppliers, as applicable, including moral rights.

4.2 Each Product is a "commercial item", as defined at 48 C.F.R. 2.101 (OCT 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (SEPT 1995), and is provided to the U.S. Government only as a commercial end item. Government and users acquire the Products under the following terms: (i) for acquisition by or on behalf of civilian agencies, consistent with 48 C.F.R. 12.212 (Sept 1995); or (ii) for acquisition by or on behalf of

the Department of Defense, consistent with 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995); each C.F.R. as amended from time to time.

5. LAB UNITS AND COLD SPARES

If Ordering Activity acquired a unit of Product for use in a laboratory environment, or as a cold spare, then that product unit is provided "as is" with no warranty (until in the case of a cold spare only it is used on a production basis and the product unit it is replacing is returned to Contractor (or at Contractor's option, certified destroyed), at which time the other warranties in this Attachment applicable to the returned (or destroyed) unit are transferred to the cold spare unit). For laboratory units the warranties and indemnities herein apply only for claims arising from, and for damage arising solely from, non-production use.

SCHEDULE A: CUSTOMER CARE - TECHNICAL SUPPORT SERVICES

A.1 TERM OF SUPPORT SERVICES

a) Initial Term. If Support Services have been purchased, the initial term of Support Services shall be from the Support Services Start Date until the Expiry Date. If a Support Services Term extends beyond a license Term, Contractor is only obliged to provide Support Services for the balance of the Support Services Term if Ordering Activity purchases an extension of the License Term for at least the balance of the Support Services Term. Renewal of the license Term (purchase of an extension and new key) does not automatically extend the Support Services Term. Renewal of the Support Services Term does not automatically extend the license Term.

b) Reserved.

c) Termination. Ordering Activity shall be entitled to terminate Support Services (or only the Technical Account Management element thereof) by providing written notice to Contractor not less than sixty (60) days prior to the Expiry Date.

d) Reinstatement. Should Ordering Activity terminate (or choose not to renew) annual Support Services and subsequently re-instate them, Ordering Activity shall be responsible for payment of all Support Services fees that would have regularly been incurred during the period between termination/non-renewal and reinstatement. Contractor, through BCN, reserves the right to require a billable 'system health check' to ensure that Ordering Activity's infrastructure and Product software are in a supportable state prior to reinstatement.

e) Fees. Support Services are not included in the license fee, and the Support Services fee does not include payment for any license fee or renewal thereof. Support Services are only available if separately purchased and if your account is in good standing.

f) Product Retirement.

1. Contractor, through BCN, is entitled to discontinue Support Services for a version of a Product at any time.

2. Absent an emergency, Contractor, through BCN, will endeavor to notify Ordering Activity in writing six (6) months prior to BCN's discontinuance of Support Services provided to Ordering Activity for: (i) one or more applicable versions of the software for (or comprising) the applicable Product, and/or (ii) the Hardware System.

3. Notwithstanding A.1(f)1 and 2, Ordering Activity shall be entitled to continue to receive all Support Services for such discontinued:

(A) Product until the end of the Ordering Activity's then current contract for purchase of Support Services that is in force as of the effective date of such notice; and

(B) Hardware Systems for up to three (3) years from the unit's purchase date; provided Ordering Activity maintains an active, and uninterrupted, Support Services contract in good standing for the Product.

4. After the discontinuance period has expired, Ordering Activity may purchase support. However, such Support Services shall exclude Updates. By way of illustration only, assume a January 1, notice of discontinuance, advising that software version 5.0 is being discontinued on June 1, and replaced by version 5.5. Assume Ordering Activity has purchased support for version 5.0 through September 30, and Ordering Activity does not wish to upgrade from version 5.0 to version 5.5. Contractor, through BCN, will continue to support version 5.0 for Ordering Activity through September 30, but such support will not include Updates between said June 1 and September 30. Thereafter, Ordering Activity may still purchase technical support, for the immediately following term, conditional upon it upgrading to the then current Release. Alternatively, Ordering Activity may continue to use and obtain SUPPORT SERVICES for a discontinued version for a term and at a price mutually agreed upon by Ordering Activity and Contractor.

g) Suspension of Services. If Ordering Activity is in breach of its obligations under the Agreement, Contractor shall be entitled to suspend the provision of Support Services hereunder until such breach is remedied in full by Ordering Activity. If the breach remains un-remedied thirty (30) days following notice from Contractor to Ordering Activity of said breach, Contractor may terminate its obligation to provide Support Services for the balance of the term, immediately upon delivery of written notice of such termination to Ordering Activity.

A.2 SCOPE OF SUPPORT SERVICES

a) Authorized Contacts. Only Authorized Contacts shall be entitled to access Support Services hereunder.

b) Version Support. Contractor, through BCN, shall provide Support Services hereunder for Cases in respect of the current Major Release of the software and the previous Major Release. Cases pertaining to versions prior to the previous Major Release of the software are not eligible for Support Services. Contractor, through BCN, shall use reasonable commercial efforts to provide at least six (6) months' prior notice to Ordering Activity of the end of support for a particular Major Release.

c) Language. Contractor, through BCN, shall provide Case Support described herein in English.

d) Enhancements and Program Changes. Contractor, through BCN, shall be entitled to continue to reasonably develop the Support Services provided to Ordering Activity and the processes through which they are made available to Ordering Activity. Contractor, through BCN, shall notify Ordering Activity of any such changes within an updated Support Handbook or otherwise from time to time. If Contractor, through BCN, alters the scope of such Support Services during the term hereof in such a way as to materially and adversely impact Ordering Activity's ability to make use of such Support Services, Ordering Activity shall be entitled to terminate the term upon sixty (60) days' prior written notice to Contractor.

A.3 LIMITATIONS

Contractor has no obligation to provide any Support Services if: i) Ordering Activity has modified or attempted to modify the Product without Contractor's written authorization (including, without limitation, opening the Product's shell); ii) Ordering Activity is attempting to use the Product with hardware or software (including operating system software) other than those specifically recommended by BCN; iii) Contractor has not received payment; or iv) Contractor, through BCN, determines that the cause of the Error or problem is the malfunctioning or failure of any hardware, software or other item not furnished by Contractor. Any Support Services provided in any such situation is without warranty of any nature or kind.

Support Services do not include: (a) support, installation or upgrades for any third Party non-BCN products; (b) onsite services unless specifically and separately agreed upon; (c) implementation of Updates (including any data migration for such implementation); or (d) any professional services work under a separate statement of work.

a) Authorized Contacts. Ordering Activity shall appoint up to 3 named individuals, including a Primary Administrator, as Authorized Contacts, who shall be entitled to access Case Support hereunder.

Ordering Activity shall be entitled to replace Authorized Contacts upon reasonable notice to Contractor at any time during the term of Support Services, provided however that the total number of Authorized Contacts at any time shall not exceed the maximum number identified above. Contractor reserves the right to limit designation of Authorized Contacts to individuals with a demonstrated ability to perform this function.

For security and confidentiality purposes, each Authorized Contact must include the specific individual's email address, rather than a distribution list.

b) Primary Administrator.

i. Appointment. Ordering Activity shall designate one Authorized Contact as Primary Administrator. Ordering Activity shall also identify one alternate Authorized Contact to fulfill all responsibilities of the Primary Administrator if the Primary Administrator is unavailable. Only one individual shall fulfill the function of Primary Administrator at any given time.

ii. Responsibilities. The Primary Administrator (or the alternate, if applicable) shall be responsible for ensuring Ordering Activity's compliance with the "Ordering Activity Responsibilities" articulated in Article 7 hereof, and shall be responsible for the following:

- Avoidance of submission by Ordering Activity of duplicate Cases;
- Conducting or ensuring knowledge transfer within Ordering Activity's organization relating to incoming and resolved Cases;
- Co-ordination of Ordering Activity's Case resolution priorities; and
- Resolution of escalation from Contractor to Ordering Activity in relation to any Support Services issues.

A.4 TECHNICAL SUPPORT

a) Support Desk. For the Support Services term, Contractor, through BCN, shall provide all Authorized Contacts with access to the Support Desk for Ordering Activity's Case Support inquiries. The Support Desk is responsible for coordinating and monitoring the Resolution of all Cases.

b) Normal Service Hours. Subject to scheduled maintenance, normal Service Hours are 24 × 365 days a year.

c) Care. The Care Technical Support Self-Service Portal provides Ordering Activity's Authorized Contacts with a structured means of reporting, logging, and tracking Cases and related Resolution activities. Cases shall be recorded in Care with information relating to their symptoms, basic diagnostic data and information about the Product and Ordering Activity's use thereof.

d) Case Management.

i. Reporting and Communication. For initial reporting and submission of Cases, the applicable Authorized Contacts shall endeavor to use Care, unless Care is unavailable due to scheduled maintenance, unscheduled outage, or is otherwise inaccessible by the applicable Authorized Contact. Care can be accessed by Authorized Contacts through the Internet, using a supported Web browser. For subsequent enquiries or updates, Ordering Activity may use Care, or may email or telephone the Support Desk.

ii. **Response Commitment.** Following initial Case submission, Contractor, through BCN, shall provide the Authorized Contact with prompt email confirmation of the Case Support submission, and a direct response from a Support Desk representative within the response times set out in Table A1 below. This response shall indicate whether Contractor, through BCN, requires any further information with respect to the Case and an indication of the commencement of Resolution activities.

iii. **Severity Code Assignment.** If Contractor, through BCN, cannot promptly provide a Resolution to the submitted Case, the Support Desk representative shall assign a Severity Code to the Case (if not provided, or if Contractor, through BCN, reasonably disputes the assignment provided, by the applicable Authorized Contact). If conditions relating to a logged Case materially change, such that the Case subsequently meets the criteria of a higher or lower Severity Code, then such Case shall be re-classified by Contractor, through BCN, as such, and shall then follow the Response Time of: (i) a higher Severity Code, upon Contractor's receipt of Ordering Activity's written notice reasonably requesting such a change; or (ii) a lower Severity Code, which Contractor, through BCN, may reasonably deem as a result of Contractor's and Ordering Activity's Resolution activities or a reasonable Workaround.

iv. **Assessment and Resolution Estimate.** The Support Desk representative shall promptly initiate detailed Case assessment activities, the completion of which shall result in Contractor's, through BCN's provision to the Authorized Contact of a good faith, non-binding, estimate of the time required to produce a Resolution for the Case.

v. **Prioritization.** Unless otherwise directed by the Primary Administrator, Contractor, through BCN, shall attend to each of Ordering Activity's reported Cases based upon the level of its Severity Code and, for Cases of the same Severity Code, based upon either the date and time of receipt of the reported Case or the defined business priority identified.

vi. **Resolution.**

- Contractor, through BCN, shall use commercially reasonable efforts to provide Resolutions to all submitted Cases in a timely manner.
- Ordering Activity shall co-operate promptly with Contractor and BCN in the investigation, diagnosis and Resolution of Cases. Without limiting the generality of the foregoing, Ordering Activity shall respond in accordance with timelines articulated in the Support Handbook to Contractor's requests for information or action relating to a Case. Contractor, through BCN, shall work with Ordering Activity to determine the appropriateness of Workarounds and patches to reported Cases, as necessary.
- Cases that cannot be resolved promptly by the Support Desk personnel may be assigned or escalated to other specialized groups within Contractor and BCN (e.g. Development).
- When a Case has been resolved, the Support Desk shall ensure that Case records are reasonably complete and accurate, and that the Resolution is agreed upon by the appropriate Authorized Contact.

A.5 MAINTENANCE

a) **Updates.** During the Support Services term, Ordering Activity shall be entitled to receive all Updates of the Software that Contractor, through BCN, makes generally available, without additional payment, to Support Services subscribers, including any associated Documentation. Upon release, Contractor, through BCN, shall promptly notify Ordering Activity of such Updates and/or Documentation and Deliver such Updates and Documentation to Ordering Activity upon request.

b) **Hardware Replacement.** Ordering Activity shall be entitled to rapid replacement for qualifying hardware platform failures, per Contractor's through BCN's RMA process. After Ordering Activity and Contractor through, BCN, mutually determine that the unit qualifies for replacement, Contractor, through BCN, will ship a replacement system free of charge using an express courier service. If the request to ship is received before 2pm ET, Contractor, through BCN, will make reasonable commercial efforts to ship a replacement unit to arrive for the next business day, if not earlier. Requests made after 2pm ET will be shipped on the next business day. Delivery is typically 1-3 business days but can vary according to location.

A.6 TECHNICAL ACCOUNT MANAGEMENT (TAM) SUPPORT

a) **Scope of TAM Support.** A Technical Account Manager (TAM) is a senior Customer Care team member designated to work with an Ordering Activity that purchases TAM Support, through its Authorized Contacts. The TAM will become as familiar with the Ordering Activity's Product related needs as the Ordering Activity wishes, so that the TAM can be a ready resource when required. TAM Support Services include:

i. Direct Case Escalation

ii. Release Management Support

- The TAM shall provide services in relation to the evaluation, recommendation and coordination of deployment of Updates, as requested by Ordering Activity

iii. Scheduled communication and activity, including assistance for scheduled after-hours activity

iv. Detailed Case reports, manually and automatically extracted from Care

v. Onsite activity, when requested and mutually agreed upon as a necessary next step

vi. Operational Support, which consists of:

- General advice regarding interoperability between Product and third party components not licensed by Contractor, through BCN, to Ordering Activity;
- General Product performance investigation, and possible remediation

b) Prerequisites and Fees.

i. Prerequisites. TAM Support services are only available if:

- Ordering Activity is a current Support Services subscriber and has additionally subscribed for TAM support; and
- All valid invoices for TAM Support have been paid when due and the account remains in good standing.

A.7 EVERGREEN - HARDWARE SUPPORT PROGRAM

Evergreen Hardware Support provides Ordering Activity with replacement hardware. The old hardware is replaced with BCN's then current hardware platform, upon Ordering Activity's written request, any time after the third anniversary of the unit's original purchase date, and prior to the end of either the fourth or fifth anniversary, depending on the Evergreen Hardware Support term purchased and paid for by Ordering Activity (as evidenced in Ordering Activity's Order for the unit being replaced).

A.8 CUSTOMER RESPONSIBILITIES

a) Environment Dependency. To address certain Cases related to Product performance, Contractor, through BCN, may request that Ordering Activity disable or remove non-essential software from each applicable server, and/or upgrade third party hardware, network, or other components. If Ordering Activity is unable or unwilling to take such measures and if such Case is related thereto, Ordering Activity acknowledges that Contractor, through BCN, shall not be required to provide Resolutions to such Cases hereunder.

b) Ordering Activity Instance Connectivity. Ordering Activity shall provide Contractor, through BCN, with read-only access to Ordering Activity's production environment and read-write access to Ordering Activity's test application environment. Certain remote administration software such as WEBEX, or an alternate may be required. Provided that Ordering Activity provides Contractor, through BCN, with reasonable advance notice, Contractor, through BCN, shall comply with Ordering Activity's reasonable security and privacy requirements in connection with any such access.

c) Apply Updates. Ordering Activity shall apply recommended Updates and shall make any related infrastructure requirements for each deployed Update to ensure continued supportability, but in any event, not more than six (6) months after its release by Contractor, through BCN. Subject to delays necessitated by adherence to A.7(g) below, Ordering Activity acknowledges Contractor, through BCN, bears no liability for damage suffered by Ordering Activity after the recommended Update is available and before it is deployed, if, or to the extent, its deployment would have avoided or mitigated the damage.

d) Attend Training. As necessary, Ordering Activity shall ensure that the System Administrator and each designated Authorized Contact attends approved training (both Product and administration training, where available; conducted by either Contractor, through BCN trainers, or by Ordering Activity's trainers who have completed BCN's 'train-the-trainer' training), for each Major Release of the Software that Ordering Activity implements.

e) Ordering Activity "Triage". Ordering Activity shall conduct internal Case "triage" (assessment and prioritization) for each Case via Ordering Activity's internal support mechanisms or 'tier 1 support desk', which shall first review all appropriate Documentation for relevant information pertaining to each Case (e.g., user guide, on-line help, installation guide, and the Care knowledge base). Prior to reporting each Case to Contractor, or directly BCN, Ordering Activity shall reproduce each Case in a lab that matches the current production environment, which Ordering Activity maintains and which is sufficiently standardized to determine the root cause. Contractor, through BCN reserves the right to charge its regular hourly professional services rate for a Case if it becomes apparent that the Customer has not performed the triage in a reasonable manner.

f) Support Handbook. Authorized Contacts shall adhere to BCN's reasonable support procedures and escalation guidelines as set out in the Support Handbook.

g) Update Testing. Ordering Activity shall test all provided Updates within a reasonable amount of time from Delivery in a lab environment, and prior to deployment into Ordering Activity's Production environment.

Table A1 - CASE SUPPORT COMMITMENTS

Severity Code 1

System Impact Definition / Condition: Production System Down or imminent Production mission critical failure, no workaround available.

Response Time Commitment: 1 Hour

Priority Available: 1

Resource Commitment and Escalation:

-
- Immediate engagement of an Escalation Analyst
 - Immediate notification to Customer Care Management
 - Further escalation to a Senior Developer as required

Severity Code 2

System Impact Definition / Condition: Loss of key functionality which affects significant aspects of the business or operations.

Response Time Commitment: 3 Hours

Priority Available: 2 through 3

Resource Commitment and Escalation:

- Escalation from Technical Representative to Technical Analyst
- Further escalation to Escalations Analyst and/or Development as required

Severity Code 3

System Impact Definition / Condition: Issue impacting an isolated component that does not affect the ability of the system to perform in accordance with the documentation.

Response Time Commitment: 6 Hours

Priority Available: 2 through 5

Resource Commitment and Escalation:

- Escalation from Technical Representative to Technical Analyst
- Further escalation to Escalations Analyst and/or Development as required

Severity Code 4

System Impact Definition / Condition: Product is usable with limitations and workarounds - also a placeholder for general inquiries.

Response Time Commitment: 24 Hours

Priority Available: 2 through 5

Resource Commitment and Escalation:

- Escalation from Technical Representative to Technical Analyst
- Further escalation to Escalations Analyst and/or Development as required

Severity Code 5

System Impact Definition / Condition: No System Impact Identified (e.g. Feature Requests, User Account Requests, Software Delivery, etc.)

Response Time Commitment: 48 Hours

Priority Available: 2 through 5

Resource Commitment and Escalation:

- Escalation recipient is dependent on the type of case requested

BMC Software, Inc.
2103 CityWest Blvd.
Houston, TX 77042-2827

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

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

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- bb) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - cc) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - dd) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - ee) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - ff) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - gg) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - hh) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - ii) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - jj) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
 - kk) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - ll) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - mm) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - nn) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

BMC SOFTWARE INC

BMC SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

BMC END USER LICENSE AGREEMENT

This Agreement ("**Agreement**") is between the entity or individual entering into this Agreement ("**Customer**") and the BMC Entity for the applicable Region where Customer acquired the License as described in Section 18 ("**BMC**").

1. **GENERAL DEFINITIONS.**

"**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

"**Documentation**" means the technical publications relating to the software, such as release notes, license entitlement descriptions, reference, user, installation, systems administrator and technical guidelines, **included with the Product.**

"**Licensed Capacity**" is the amount of each Product licensed as established in the Order.

"**Order**" is an agreed written or electronic document, subject to the terms of this Agreement that identifies the Products to be licensed and the Licensed Capacity and/or the Support to be purchased and the fees to be paid.

"**Product**" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by BMC to Customer under Support.

"**Support**" is the support services program as further specified in this Agreement.

"**Territory**" means the country(ies) where Customer is licensed to install the Product as specified in the Order.

2. **SCOPE.** Licenses are granted, and Support is obtained, solely by execution of Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is agreed to by each party. Orders may be entered under this Agreement by and between (a) BMC or an Affiliate of BMC; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the terms "BMC" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two party agreement between such entities, and BMC or its authorized reseller will separately invoice the Customer named in the Order for the associated License fees and Support fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by BMC and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether BMC acknowledges, accepts or fully or partially performs under such purchase order, **BMC OBJECTS** to any additional or different terms in the purchase order.

3. **LICENSE.** Subject to the terms, conditions, payment requirements and restrictions set forth in this Agreement, BMC grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual (unless a non-perpetual license is provided on an Order) license to install in the Territory, access and use the Product (i) up to the Licensed Capacity, (ii) for Customer's and its Affiliates internal business operations, (iii) in accordance with the Documentation and the applicable Order, and (iv) make one copy of the Product for archival purposes only (collectively a "**License**"). Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

4. **RESTRICTIONS.** Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity or other than as set forth in the License above; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product, or copy or partial copy of a Product; (c) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the Product to any third party; (e) use the Products in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the products to be used by an outsourcing or service bureau provider on Customer's behalf; (f) provide a third party with the results of any functional evaluation, or performance tests, without BMC's prior written approval; or (g) attempt to disable or circumvent any of the licensing mechanisms within the Product.

5. **PRODUCT PERFORMANCE WARRANTY.** BMC warrants that (a) the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order, (b) BMC has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the Product, BMC has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation of the Product in accordance with the License. This warranty will not apply to any problems caused by hardware, Computers, or software other than the Product, or misuse of the Product, use of the Product other than as provided by the applicable License, modification of the Product, or claims made either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 12.
6. **LIMITED REMEDIES.** BMC's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: BMC's use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time, or if BMC cannot have the Product perform in substantial accordance with its Documentation replace the Product within such time period, then BMC will refund the amount paid by Customer for the License for that Product. Customer's rights and BMC's obligations in this Section are conditioned upon Customer's providing BMC during the warranty period (a) full cooperation and access to the Product in resolving any claim; and (b) written notice addressed to the BMC Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in BMC's development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.
7. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE PRODUCT IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.
8. **SUPPORT.** Customer may acquire BMC support services ("**Support**") on an Order for the total Licensed Capacity of a Product. Once Support is acquired for a Product, Customer is automatically enrolled in Support on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least 30 days written notice prior to the next Support anniversary date. The annual fee for Support will be agreed upon at the time of each Order. A further description of Support is located at www.bmc.com/support/review-policies, and is incorporated herein by this reference. BMC may change its Support terms to be effective upon Customer's support anniversary date. BMC reserves the right to discontinue Support for a Product where BMC generally discontinues such services to all licensees of that Product. If Customer terminates Support and then re-enrolls in Support, BMC may charge Customer a reinstatement fee.
9. **PAYMENT, DELIVERY AND TAXES.** If Customer is purchasing directly from BMC, Customer will pay each License fee and/or Support fee upon receipt of invoice. Customer will pay, or reimburse, BMC or when required by law the appropriate governmental agency for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on BMC's net income) imposed in connection with the License and/or the Support fees which are exclusive of these taxes. For Products that are delivered electronically, upon request from BMC, Customer agrees to provide BMC with documentation supporting that the designated Product was received electronically. If Customer accepts any Product in a non-electronic format, there may be an additional charge and it is the sole responsibility of Customer to bear any sales/use tax obligation, penalties, and interest. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law. All Products are licensed FCA ("Free Carrier" as per Incoterms 2000) shipping point. The Products are accepted on the date BMC delivers the Product to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the Product Performance Warranty provided in this Agreement.
10. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) BMC, its Affiliates or licensors retain all right, title and interest to the Product, Support and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC reserves any rights not expressly granted to Customer in this Agreement. (b) "**Confidential Information**" means all proprietary or confidential information that is disclosed to the recipient ("**Recipient**") by the discloser ("**Discloser**"), and includes, among other things (i) any and all information relating Discloser financial information, customers, employees, products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, and its licensors, the Product (excluding portions of the Documentation that BMC makes publicly available) and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. (c) **Notification Obligation.** If the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information,

then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

11. **DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY.** EXCEPT FOR VIOLATIONS OF LICENSE RESTRICTIONS (SECTION 4), AND PROPRIETARY RIGHTS AND CONFIDENTIALITY (SECTION 10) AND FOR INFRINGEMENT CLAIMS (SECTION 13), NEITHER PARTY, ITS AFFILIATES OR BMC'S LICENSORS ARE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, SUPPORT, THE PRODUCT OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE PRODUCT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF ACTUAL, DIRECT DAMAGES UP TO THE GREATER OF THE AMOUNT PAID AND PAYABLE BY CUSTOMER FOR THE LICENSE TO THE APPLICABLE PRODUCT GIVING RISE TO SUCH DAMAGES.

12. **TRIAL LICENSE.** BMC may determine, in its sole discretion, to make products available to Customer without an Order and without charge. Such products are deemed to be "Products" pursuant to this Agreement except that (a) they are provided to Customer solely so that Customer may evaluate internally whether to acquire a license to the products for a fee, (b) the license term for such products is 30 days; (c) the Products are provided "AS IS" and without any warranty or support, and (d) the products cannot be put into productive use or included as part of Customer's business processes in any manner, unless or until they are expressly licensed and paid for under an Order. BMC may terminate all of Customer's rights and licenses to these Products for BMC's convenience upon notice to Customer.

13. **INFRINGEMENT CLAIMS.** If a third party asserts a claim against Customer asserting that Customer's use of a Product in accordance with this Agreement violates that third-party's patent, trade secret or copyright rights ("**Infringement Claim**"), then BMC will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer based on infringement by the Product. BMC's obligations under this Section will not apply if: (a) BMC's legal department does not receive prompt, detailed written notice of the Infringement Claim from Customer, (b) BMC is not able to retain sole control of the defense of the Infringement Claim and all negotiations for its settlement or compromise, (c) BMC does not receive all reasonable assistance, or (d) the Infringement Claim is based on (i) the use of Product in combination with products not approved by BMC in the Product's Documentation, (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer, or (iii) the failure of Customer to use the Product as permitted by the Order and in accordance with the Documentation. BMC will not bind Customer to a monetary obligation in a settlement or compromise, or make an admission on behalf of Customer, without obtaining Customer's prior consent. If BMC determines in BMC's reasonable discretion that use of the Product should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and BMC is unable to have such injunction stayed or overturned, or if BMC settles an Infringement Claim on terms that would require Customer to stop using the Product, then BMC will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in BMC's reasonable judgment, neither (a) or (b) is commercially reasonable, terminate Customer's License to the Product and (i) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Order under which the Products were initially licensed; and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product or issue a pro rata refund for any fees paid in advance. This Section contains Customer's exclusive remedies and BMC's sole liability for Infringement Claims.

14. **TERMINATION.** Upon thirty days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders placed prior to its effective date and such Orders will remain in full force and effect under the terms of this Agreement. BMC may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order within 30 days after receipt of written notice from BMC of non-payment; (ii) terminate any or all Orders, Licenses to the Products and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of BMC, its Affiliates or licensors, or uses the Products outside of the scope of the applicable Licenses; or (iii) terminate all Licenses and this Agreement in whole or in part if Customer commits any other material breach of this Agreement and fails to correct the breach within 30 days after BMC notifies Customer in writing of the breach. Upon any termination of a License, Customer will immediately uninstall and stop using the relevant Product, and upon BMC's request, Customer will immediately return such Product to BMC, together with all related Documentation and copies, or certify its destruction in writing.

15. **AUDIT.** If requested by BMC, and not more than once a year, Customer agrees to deliver to BMC, within 30 days of such request, as specified by BMC either (a) periodic product usage reports generated from specific products or (b) written periodic product usage reports, to be provided solely when the product does not generate reports. Additionally, if requested by BMC not more than once a year, Customer agrees to allow BMC to perform an audit at the locations where the Products are installed, during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product,

Customer agrees to pay the applicable fees for additional capacity upon receipt of invoice. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BMC's reasonable costs of conducting the audit.

16. EXPORT CONTROLS. Customer represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Product is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Product under such regulations; d) will not acquire the Product for a person who is restricted under such regulations; e) will not use the Product in contradiction to such regulations; and f) will not use the Product for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Product exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Product is intended for civil purposes only. Therefore, Customer agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in Customer forfeiting all rights to the Product..

17. GOVERNING LAW AND DISPUTE RESOLUTION. A party will provide written notice to the other party of any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof ("Controversy"). The parties shall engage in good faith negotiations to resolve the Controversy. Only if the Controversy is not resolved through good faith negotiations within 15 days of the sending of the written notice of Controversy, the Controversy may be submitted to litigation or binding arbitration, based on the place of incorporation of the parties, as follows:

(i) If both parties to this Agreement are entities incorporated under the law of any state in the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both sides hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens.

(ii) If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the arbitration shall be held in Amsterdam, Netherlands under the then-applicable rules of the International Chamber of Commerce and the substantive laws of the Netherlands will govern.

(iii) If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the arbitration shall be held in Singapore under the then-applicable rules of the Singapore International Arbitration Centre and the substantive laws of Singapore will govern.

(iv) In all other instances, the arbitration shall be held in New York City, New York, under the then-applicable international rules of the American Arbitration Association and the substantive laws of the State of Texas will govern.

For all arbitrations conducted hereunder: (a) the arbitration shall be conducted in English; (b) the relevant arbitral institution shall determine the number of arbitrators, but any Controversy in which the amount in dispute is greater than \$10 million USD shall be decided by three arbitrators, with each party having the right to select one arbitrator; (c) the costs of such arbitration shall be borne equally, pending the arbitrator's award; (d) the arbitration award rendered shall be final and binding on the parties, shall not be subject to appeal to any court and shall be enforceable in any court having jurisdiction over the Parties; (e) the arbitration proceedings, award and pleadings shall all be confidential, unless disclosure of particular information is required for purposes of enforcing/challenging the award or to meet local securities law requirements; and (f) the party prevailing in arbitration shall be entitled to recover its reasonable attorneys' fees and the necessary costs incurred in connection with the arbitration.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute.

18. BMC ENTITIES. The following licensing entities apply to this Agreement:

Region	Licensing Entity	Address of Licensing Entity
United States and Latin America South (not a specified Central or South America country below)	BMC Software, Inc.	2103 CityWest Boulevard, Houston, Texas 77042
Canada	BMC Software Canada Inc.	50 Minthorn Boulevard, Suite 200 Markham, Ontario L3T 7X8 Canada
EMEA (Europe, Middle East and Africa)	BMC Software Distribution B.V.	Boeing Avenue 245, 1119 PD Schiphol Rijk, The Netherlands
Brazil	BMC Software do Brasil Ltda.	Av. das Nações Unidas, 8.501 – 22º Andar Condomínio Eldorado Business Tower São Paulo, Brasil – 05425-070
Mexico	BMC Software Distribution de México, S.A. de C.V.	Torre Esmeralda II Blvd. Manuel Avila, Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.
Argentina	BMC Software de Argentina S.A.	Ing. Butty 220 – Piso 18, Buenos Aires, Republica Argentina, C1001AFB
S.E.A (Southeast Asia), Australia, New Zealand, Hong Kong, Taiwan	BMC Software Asia Pacific Pte Ltd	600 North Bridge Road, #20-01/10 Parkview Square, Singapore 188778

Region	Licensing Entity	Address of Licensing Entity
China	BMC Software (China) Limited	Room 502, Level 5, Tower W1, The Towers, Oriental Plaza, No. 1 East Chang An Ave., Dong Cheng Dist., Beijing 100738, China
Japan	BMC Software K.K.	Harmony Tower 24th Floor, 1-32-2 Honcho, Nakano-ku, Tokyo, 164-8721
Korea	BMC Software Korea Ltd	24 th Fl., ASEM Tower, , 1517, Yeongdong-daero, Gangnam-gu, Seoul 135-798, Korea South

19. **ASSIGNMENT AND TRANSFERS.** Customer may not assign or transfer a Product separate from the applicable Agreement and License, and may not assign or transfer an Agreement or a License, except in the event of a merger with or into, or a transfer of all or substantially all of Customer's assets to, a third party who assumes all of Customer's liabilities and obligations under the Agreement and License, and expressly agrees in writing to be bound by and comply with all of the terms of the Agreement and License. Except as specifically authorized by applicable law, any attempt to assign or transfer an Agreement or License in violation of this provision will be null and void and be treated as a violation of BMC's intellectual property rights or use outside the scope of the License.

20. **DATA PROTECTION, DATA PROTECTION.** (a) Customer acknowledges that BMC neither requires nor needs Customer to (i) send BMC any personal data collected by Customer ("**Customer Collected Data**") or (ii) give BMC access to any Customer Collected Data. Consequently, Customer remains responsible for either filtering, making anonymous, encrypting such Customer Collected Data or for having proper procedures in place to prevent Customer Collected Data from being sent to or accessed by BMC. (b) In the course of normal business, BMC may collect and process personal information related to the Customer (mainly contact and related information) in order to perform its obligations under this Agreement and/or under an Order, such information being referred to hereinafter as "**Customer Contact Information**". Where the Customer Contact Information is to be processed by BMC, BMC will comply with its Controller and Processor Binding Corporate Rules Policy found at <http://media.cms.bmc.com/documents/External+Privacy+Binding+Coporate+Rules+Policy+-+Aug+04.pdf> (the "**BCR**") with respect to compliance with data protection laws and/or regulations. The BCR policy is incorporated into a BMC corporate wide policy, requiring all BMC entities, employees and third party providers to comply with and respect the BCR policy which is governing the collection, use, access, storage and transfer of personal data among BMC entities and third-party sub-processors. The details of the BCR approval of BMC Software are available at http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr_cooperation/index_en.htm. BMC shall in particular: (i) allow Customer to access, modify, correct or erase Customer Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Contact Information and to prevent its unauthorized access, use, or disclosure; and (iii) refrain from using Customer Contact Information for any other purpose than performing its obligations under this Agreement and/or any Order.

21. **MISCELLANEOUS TERMS.** A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements between the parties relating to the subject matter of this Agreement. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement; provided, however, this provision does not apply to the payment of monies or any breach of Section 10. Customer agrees that BMC and its affiliates may refer to Customer as a customer of BMC, both internally and in externally published media. The BMC Products may contain third party software which is delivered to Customer as part of the Product and may not be taken out of the Product or used separately from the Product and for which additional terms may be included in the Documentation. The Product may contain hyperlinks to websites controlled by parties other than BMC. BMC is not responsible for and does not endorse the content or accept any responsibility for Customer's use of these websites. Customer should refer to the policies posted by other websites regarding data privacy and other topics before using them. Any additional documents presented to a BMC representative by Customer for signature as a condition for going on a Customer's site will be governed by this Agreement and to the extent that such document presents additional terms or conflicts with this Agreement, it shall be considered null and void.

22. **U.S. FEDERAL ACQUISITIONS.** This Section applies only to acquisitions of the commercial Product and Documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Products are delivered to the United States Government, the United States Government hereby agrees that the Products qualify as "commercial items" within the meaning of the Federal acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government's use and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights – Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988)."

23. **ADDITIONAL TERMS.** The following additional terms are incorporated into this Agreement.

a. **DEFINITIONS.** Terms set forth below have the indicated meaning regardless of whether they are capitalized.

"**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

“Cloud Environment” means a shared pool of configurable computing resources (e. g., networks, servers, storage, applications and services) managed so they behave as if they were one computer.

“Cloud Service Provider” is an entity that provides Cloud Services to Clients under agreements pursuant to transactions for which the Cloud Service Provider is compensated.

“Cloud Services” means the dynamic provisioning of IT resources as a service, where typically the Cloud infrastructure is shared across multiple tenants, and tenants are billed on a utility/subscription basis for what they use. Examples of Cloud Services include Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS).

“Computer” or **“Server”** has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.

“Enterprise” is the environment consisting of all hardware owned or leased by a Customer or by a Client respectively, in the Territory.

- b. **LICENSE RESTRICTIONS.** The following restrictions apply to certain Products.

BMC Application Automation – License Add-on: Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

AppSight Products:

- **BMC AppSight Initial Platform** (“AppSight System”) may only be used to support a Customer’s own applications according to the AppSight System configuration licensed. For this purpose, Customer’s “own” applications are those of which Customer is the ultimate beneficiary or applications developed by Customer as an independent software vendor. Each AppSight System may only be used with the platform designated on the Product Table (Windows/ Net or J2EE) unless a BMC AppSight Additional Platform is licensed for that AppSight System which enables the AppSight System to be used with an additional platform. Each AppSight System may only be used for the Workflow designated on the Product Order Form unless a BMC AppSight Additional Platform is licensed for that AppSight System for an additional Workflow.
 - **AppSight System-Team Edition** may only be used at a designated Site to support a designated Application for a designated Workflow.
 - **AppSight System – Group Edition** may be used at a designated Site to support multiple applications of a designated Group for a designated Workflow.
 - **AppSight System – Division Edition** may be used at multiple Sites to support multiple applications of a designated Division for a designated Workflow.
- **BMC AppSight Named User** is a license to use the full BMC AppSight System. Customer must provide the individual domain ID or email ID for each named user. Once designated, the BMC AppSight Named User may only be changed if the individual leaves the Customer or the Team, Group or Division as applicable. BMC AppSight Named Users may not be transferred from one AppSight System to another.
- **BMC AppSight QA User** is a license to use the AppSight Test Recorder module of the AppSight System.
- **BMC AppSight Level 1 Viewer** is a license to use limited-functions of AppSight System that provides a user with the ability to view and replay the visual recording of a Black Box log. The AppSight Level 1 Viewer may be used by the named users provided to BMC.
- **BMC AppSight for Citrix Support User** is a license to use the AppSight System for Citrix application support. Only licensed BMC AppSight for Citrix users may use the AppSight System for Citrix support.
- **BMC AppSight Connector for Defect/Incident Tracking** may only be used to interface the AppSight System to Customer’s defect/incident tracking application.
- **BMC Desktop Capture.** Customer must provide the individual domain ID or email ID for each named user. The BMC Desktop Capture Player may be used by licensed named users to play back and view BMC Desktop Capture incident recordings. Once designated, a named user may only be changed if the individual leaves the Customer.

BMC AppSight and BMC Application Problem Resolution Products:

- **License Key.** The Product may require a software license key that limits usage to that provided under the terms of the Agreement and this Product Order Form. Licensee must install and run license manager software provided with the Product at no additional cost. All AppSight Consoles must be connected to the license manager.
- **AppSight Black Box** is the agent portion of the AppSight System. . All AppSight Systems include unlimited AppSight Black Boxes which may be installed on any computers of Customer or Customer’s customers. Customer may provide Customer’s customers the limited right to install and to use on behalf of Customer the AppSight Black Boxes (but not any other components of the AppSight System) but only for the sole purpose of providing information to Customer to support Customer’s own software applications, and in no event to support Customer’s customer’s own internal software applications.
- **Embedded Black Box.** Customer may incorporate the AppSight Black Box into a Customer application, in which case, in addition to the licenses granted above, Customer is hereby granted a worldwide, nonexclusive, perpetual license to (a) incorporate the unmodified unaltered object code version of the AppSight Black Box into Customer’s designated application (“Customer Application”); (b) reproduce and distribute the AppSight Black Box as incorporated into the Customer Application; and (c) to use in unaltered form the BMC trademarks, service marks or marketing logos (the “BMC Trademarks”) solely to promote the Customer Application, provided Customer obtains BMC’s prior written approval for each new usage. Customer shall ensure that any Customer Application incorporating the AppSight Black Box shall be governed by a license agreement which is at least as protective of BMC’s proprietary rights in the AppSight Black Box as of Customer’s proprietary rights in the Customer Application, but no less protective than this Agreement, including rights and restrictions related to end user’s right to make backup and archival copies. In the event Customer incorporates the Black Box into Customer’s Application, Customer shall include in the startup screen, help and/or the about screens in the Customer Application, BMC’s

logo and the following, "POWERED BY BMC'S APPSIGHT BLACK BOX TECHNOLOGY. " Furthermore, Customer shall visually display the BMC name and the BMC product names and trademarks in the documentation for the Customer Application incorporating the AppSight Black Box, on Customer's website and in advertising and promotional materials.

BMC Atrium Orchestrator – Adapters License Add-on: Restricts license rights to deploy one unique adapter for every unit licensed; also includes unlimited deployment rights to use Light Weight Activity Peers in combination with licensed adapters; test and development license are provided at no additional cost.

- **Adapter** - a system/interfaces/gateways/connectors used to talk to external applications.
- **Light Weight Activity Peer** - Slave peers/servers that can optionally be added to a grid to accommodate network latencies and/or security topologies when deployed in combination with adapters; these peers do not directly add incremental processing power.

BMC Atrium Orchestrator Automation Pack – Device Endpoint License Add-on: Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Network Automation and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

BMC Atrium Orchestrator Automation Pack – Server Endpoint License Add-on: Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Server Automation, Discovery Synch, and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

BMC Atrium Orchestrator - Peer License Add-on: Restricts license rights to deploy one peer for every unit licensed; a peer can either be a Configuration Distribution Peer or an Application Peer; test and development license are provided at no additional cost.

- **Application Peer** – Server that executes workflows.
- **Configuration Distribution Peer** – Master application that controls all workflows, including load balancing across the grid of Peers.

BMC Atrium Orchestrator Service Desk Automation Pack – User License Add-on: The Product excludes the use of any other BMC developed runbook besides Service Desk Automation and product components (peers, base adapters, and application adapters) for other use cases including but not limited to event triage and remediation where an event management solution, such as BMC TrueSight Operations Management or other third party tool, is the generator of incidents, or closed loop compliance use cases where change requests are generated by a configuration management solution, such as BMC Server Automation or other third party tool.

BMC BladeLogic Application Release Automation: Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

BMC BladeLogic Automation Suite – Base License:

- Excludes use of the Threat Director capabilities in BladeLogic Portal except for the first 100 enrolled server endpoints
- Excludes use of BMC Atrium Orchestrator as follows:
 - BMC Atrium Orchestrator Content – Excludes the use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
 - BMC Atrium Orchestrator Platform – Excludes the use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

BMC TrueSight Operations Management – Base License or BMC ProactiveNet Performance Management Suite – Base License:

Excludes use of BMC Atrium Orchestrator as follows:

- BMC Atrium Orchestrator Content – Excludes the use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
- BMC Atrium Orchestrator Platform - Excludes the use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

BMC Remedy IT Service Management :

Excludes use of BMC Atrium Orchestrator as follows:

- BMC Atrium Orchestrator Content – Excludes the use of any workflow or runbook content other than Management and Utility actions found in the Operations Management module. Excludes the use of any base adapter. Excludes the use of any non-BMC product application adapter.
- BMC Atrium Orchestrator Platform - Excludes the use of additional licensed capacity other than what is listed here: 1 peer, 3 Development Studio named user licenses, and 5 Development Studio user licenses. This entitlement is a 1-time grant across all BMC products that include this access and rights are not cumulative.

BMC BladeLogic Database Automation: Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

BMC BladeLogic Server Automation – Compliance Module: Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

BMC BladeLogic Server Automation – Configuration Module: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

BMC BladeLogic Server Automation – Provisioning Module: Excludes use of BMC BladeLogic agent for server configuration, patching, compliance, and remediation tasks.

BMC BladeLogic Server Automation Suite: Excludes the use of BMC BladeLogic agent for the application packaging and deployment of internally built, proprietary, or custom-developed code.

BMC Capacity Management for Mainframes: Any BMC Capacity Management for Mainframes Product and/or any BMC Performance Analyzer for Mainframes, BMC Performance Predictor for Mainframes, BMC Performance Perceiver for Mainframes, BMC Performance Analyzer for Mainframe Applications and other related products that may be released as part of the BMC Capacity Management for Mainframes must be licensed for all Computer(s) within the mainframe environment for which the Product or one of its components will process data or execute functionality on behalf of, regardless of whether the Product or one of its components is specifically installed on that Computer. The Products may be installed on or moved to any Computer(s) included in the licensed environment.

BMC Capacity Management Products: Any BMC Capacity Management product for distributed systems environments can be reassigned over time from one Computer to another provided that no data related to the first Computer remains stored in the Capacity Management Product repositories.

BMC Cloud Lifecycle Management – Core License Add-on (“CLM Core”):

- The Product may only be used in a Cloud Environment.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC Atrium Orchestrator for the Licensed Capacity, only in order to deliver the process orchestration use cases that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities or product components, including, but not limited to peers, adapters, and runbook content.

BMC Cloud Lifecycle Management – Standard Pack License Add-on (“CLM Standard”):

- The Product may only be used in a Cloud Environment.
- If Customer is also a Cloud Service Provider then Product cannot be used by the Cloud Service Provider for other environments, including but not limited to the Cloud Service Provider's internal IT environment, or System Integration activities for Clients which are not part of Cloud Services. The Product may not be installed on Client premises or accessed or used directly by Clients.
- The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters or Runbook content other than what is installed out-of-the-box.
- Customer may only use the BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC Atrium Orchestrator for the Licensed Capacity, only in order to deliver the process orchestration use cases that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities or product components, including, but not limited to peers, adapters, and runbook content.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The product includes the right to use BMC TrueSight Capacity Optimizer for Servers for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC TrueSight Capacity Optimization, including but not limited to, the use of BMC TrueSight Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

BMC Cloud Lifecycle Management – Foundation Standard Pack License Add-on (“CLM Foundation”):

- The Product may only be used in a Cloud Environment.
- If Customer is also a Cloud Service Provider then The Product cannot be used by the Cloud Service Provider for other environments, including but not limited to the Cloud Service Provider's internal IT environment, or System Integration activities for Clients which are not part of Cloud Services. The Product may not be installed on Client premises or accessed or used directly by Clients.
- The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters or Runbook content other than what is installed out-of-the-box.
- The Product includes the right to use the BMC BladeLogic Server Automation (BBSA) for Server Provisioning and Software Deployment functionality only. The Product does not include the right to use any other functionality of BBSA, including, but not limited to, patching, compliance, application release automation, configuration management, discovery, inventory, and nsh-scripting.

- Customer may only use the BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The product includes the right to use BMC Capacity Optimization for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC Capacity Optimization, including but not limited to, the use of BMC Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

License Restriction for BMC TrueSight Synthetic Monitor with Borland Silk Performer: The BMC TrueSight Synthetic Monitor with Borland Silk Performer product may only be used with BMC performance management products and BMC application performance management products.

Desktop/Mobile Management Product Restrictions for BMC Configuration Management Products: Each "Desktop/Mobile Management" License is limited for use with one Client Endpoint. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer.

- **Desktop/Mobile Patch Management Restriction:** A "Desktop/Mobile Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Client Endpoint.
- **Desktop/Mobile Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Desktop/Mobile Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one licensed Client Endpoint, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose.
- **BMC Configuration Management Desktop OS Management Restriction:** A "BMC CM Desktop OS Management" License may only be used to manage operating system migration activities on one Client Endpoint. Each BMC CM Desktop OS Management License: (a) may only be used on a licensed Client Endpoint that is licensed for use with both a Desktop/Mobile Application Management License and a Desktop/Mobile Configuration Discovery License; and (b) may not be redeployed or harvested to a different Client Endpoint.
- **Extranet Application Management Restriction:** An "Extranet Application Management" License may only be used on one Client Endpoint. The parties must mutually agree on the name of each Single Application and its primary function at the time of Order. Single Application is defined as a Tuner channel containing one application with one primary function, and Tuner is defined as is the client component of the Product configured by Customer for deployment on licensed Endpoints.

BMC Configuration Management Control Center Module Restriction for BMC Configuration Management Products: Each "BMC CM Control Center" License may only be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

BMC Configuration Management Developers Kit Definition and Restriction for BMC Configuration Management Products: A "BMC CM Developers Kit" license allows Customer to embed the "SDK Run Time Code" in unmodified object code form, into a single software application developed by Customer to create an "SDK Client." "SDK Run Time Code" means the unmodified object code files in the BMC CM Product that are designated as re-distributable. "SDK Client" means a software technology with a principal purpose and functionality substantially different than that of the SDK Run Time Code and that uses only a BMC Desktop/Mobile Management Product, a BMC Device Management Product and/or a BMC Server Management Product, as applicable, to invoke the update functionality of the SDK Run Time Code. An SDK Client may only be used on, or distributed to, licensed Endpoints that are licensed separately by Customer, which licensed Endpoints may be within or outside of Customer's organization. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer. "**Device Endpoint**" means a personal digital assistant or similar computing device. "**Endpoint**" means a Client Endpoint, a Device Endpoint, a Server Endpoint, or Other Endpoint, as the case may be. "**Other Endpoint**" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

Device Management Product Restriction for BMC Configuration Management Products: Each "Device Management" License is limited for use with one Device Endpoint. "**Device Endpoint**" means a personal digital assistant or similar computing device.

Server Management Product Restrictions for BMC Configuration Management Products: Each "Server Management" License is limited for use per CPU – Subcapacity.

- **Server Patch Management Restriction:** A "Server Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches per CPU – Subcapacity.

- **Server Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Server Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on licensed Server Endpoints, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose. With respect to the above Server Management Licenses, Customer must comply with any restrictions designated at the time of Order on the maximum number of CPUs that may be included in each Server Endpoint. **"Server Endpoint"** is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

CONTROL-M/Assist: Control-M/Assist may only be used to interface with the third party scheduler and may not be used to schedule or manage batch processes outside of the cross-scheduler dependencies.

Control-M Self Service Mobile Integration Kit: The Control-M Self Service Mobile Integration Kit is governed by the terms and conditions of the license agreement provided with the product.

BMC Database Automation – License Add-on: Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

BMC Decision Support – Database Automation (5 Viewer/Query Licenses): Excludes use of Report Authoring module which must be licensed separately.

BMC Decision Support – Network Automation (5 Viewer/Query Licenses): Excludes use of Report Authoring module which must be licensed separately.

BMC Decision Support – Server Automation (5 Viewer, 1 Query License): Excludes use of Report Authoring module which must be licensed separately.

BMC FootPrints Service Core 5 Named User BASE Software Package: May be used with no more than three workspaces per instance and by no more than 15 named users.

BMC HR Case Management: The license enables the customer to use up to 300 Named MyIT Self Service users for each BMC HR Case Management licensed named user and up to 750 Named MyIT Self Service users for each BMC HR Case Management licensed concurrent user.

BMC Identity Products:

- **Internal User:** If a Product name includes the term "Internal User," that Product can only be used by Customer's employees (full time and part time) and contractors whose information is being managed using the BMC IdM tools. Information on these users will typically be found in the HR database.
- **External User:** If a Product name includes the term "External User," that Product can only be used by Customer's business partners and customers/ prospects whose information is being managed using the BMC IdM tools or Customer's employees (full or part time)/contractors who are licensed to use one or more of the following BMC Identity Management Tools: (1) BMC Identity User Administration (2) BMC Identity Password Management (3) BMC Identity Compliance Manager, provided the users have no more than 2 logons (access points) being managed by the IdM tools.
- **Archive User:** If a Product name includes the term "Archive User," that Product can only be used by users whose identity information is stored within the IdM system but is not being actively managed; the information could be stored for the purpose of audit/ forensics etc.
- **Developer User:** If a Product name includes the term "Developer User," that Product can only be used by users who create or modify applications using the BMC Directory Management Studio.

License Allocation Restriction for BMC Remedy IT Service Management Suite Products: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 5 named user licenses of the Product for 2 licenses of the same Product with the Unit of Measurement of "per concurrent user" or (ii) on the "per concurrent user" Unit of Measurement, Customer may exchange 2 concurrent user licenses for 5 licenses of the same Product with the Unit of Measurement of "per named user". Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer's new Licensed Capacity and the new Unit of Measurement.

License Allocation Restriction for BMC Remedy Service Management Products: Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the "per named user" Unit of Measurement, Customer may exchange 3 named user licenses of the Product for 1 license of the same Product with the Unit of Measurement of "per concurrent user" or (ii) on the "per concurrent user" Unit of Measurement, Customer may exchange 1 concurrent user license for 3 licenses of the same Product with the Unit of Measurement of "per named user". Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer's new Licensed Capacity and the new Unit of Measurement.

BMC Middleware Management - Performance and Availability and BMC Middleware Management - Transaction Monitoring Products: If Customer is using BMC Middleware Management version 6. 0 or lower, notwithstanding the Licensed Capacity the number of individual employees or contractors of Customer to whom access to the Management Console is granted (**"End Users"**) is limited to the lesser of (a) the Licensed Capacity of the Product if priced on a per named user Unit of Measurement, or (b) 250 End Users.

BMC Middleware and Transaction Management Products: If Customer is using BMC Middleware Management version 6. 0 or lower, when licensed on the per CPU - Subcapacity or per MIPS Unit of Measurement, regardless of the Licensed Capacity, Customer is limited to ten (10) individual employees or contractors to whom access to the Management Console is granted (**"End Users"**). When licensed on the per named user Unit of Measurement, Customer is limited to the lesser of (a) the Licensed Capacity of the Product, or (b) 250 End Users.

BMC Mobile Device Management Products: For BMC Mobile Device Management (MDM) Products, any clickwrap agreement with AirWatch, LLC contained in the Products is void and of no effect. Customer's use of these Products is governed by the Agreement.

BMC Monitoring Only Products: Customer is not entitled to use analytics as further detailed in the Documentation.

BMC myIT Suite: Each named user shall be licensed for a maximum of three (3) Device Endpoints. "**Device Endpoint**" means a personal digital assistant or similar computing device. An additional user license is required for every 3 devices registered by a unique named user. For users who register a fourth device and for every multiple of 3 devices registered by a unique user, an additional license is consumed. When a device is unregistered and the total number of devices registered by a unique user falls below 4 or a multiple of 3 devices, a MyIT user license is released for reuse.

BMC Real End User Experience Monitoring and Analytics - Licensed Add-on Product: For synthetic transaction monitoring solutions, each instance of the execution server installed should be counted. For real end user transaction monitoring solutions, each instance of the watchpoint created should be counted.

BMC Remedy Products: Customer may not bypass or delay, in any way, the consumption of a concurrent or named user license to perform an activity that requires a user license (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license).

A Remedy instance is defined as a Remedy AR System server or server group sharing a common database.

Concurrent user licenses are for use within one Remedy instance and may not be used in more than one instance.

Named user licenses cannot be shared between multiple people.

A hot backup license is a replicate of the Remedy production licenses on one backup server. Customer may access that backup server only when the customary server on which the AR System is installed fails or in preparation of that backup server for such situation.

BMC Remedy Smart Reporting component is limited to use with Remedy platform based ITSM applications (both delivered by BMC as well as custom-developed ITSM applications). It may not be used for reporting on non-ITSM applications.

Development License Restriction for BMC Remedy Products: If a Product name includes the term "Dev Lsn", Customer will restrict installation, access and use of such Product to a server dedicated to development and testing only, and will not allow any production or commercial activity on that server.

Load Balanced System Restriction for BMC Remedy Products: If Customer has multiple servers in a single logical environment pointing to a single AR System database instance, only one Instance of Remedy "per Instance" licenses is required for installation on these servers (except for the AR System, which must be licensed for each server).

BMC Remedy and MyIT Products: Customer's perpetual license in the BMC Remedy and/or BMC MyIT Products does not include a perpetual license to the Google Maps service that is currently used for the map/location feature within BMC MyIT and BMC Remedy with Smart IT. BMC Remedy with Smart IT is available for download with any license of BMC Remedy Products.

BMC Remedy Service Management Suite: The license enables the customer to use up to 100 Named MyIT Base users for each BMC Remedy Service Management Suite licensed named user and up to 250 Named MyIT Base users for each BMC Remedy ITSM Suite licensed concurrent user.

BMC Remedy Service Desk: The license enables the customer to use up to 100 Named MyIT Base users for each BMC Remedy Service Desk licensed named user and up to 250 Named MyIT Base users for each BMC Remedy Smarter Service Desk licensed concurrent user.

BMC Remedy Service Management Suite: Each person can have only one user license type (named or concurrent). Each user can have one and only one type of concurrent user license: BMC Remedy Service Management Suite User license, BMC Remedy Service Desk User license BMC Remedy Service Optimization User license, or BMC Remedy Service Innovation User license.

BMC Server Automation – Compliance License Add-on: Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

BMC Server Automation – Configuration License Add-on: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

BMC Server Automation – License Add-on: Excludes the use of BMC BladeLogic agent for the application packaging and deployment of internally built, proprietary, or custom-developed code.

BMC Server Automation – Patch License Add-on: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

BMC Server Automation – Provisioning License Add-on: Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

BMC Service Desk Express Products: No terms in any Business Objects or Crystal license agreement embedded in the Product apply to the Product. Customer may make and operate 2 additional copies of the Product solely for internal pre-production configuration and testing purposes.

BMC Service Desk Express Suite Restriction for BMC Service Desk Express Products: When purchasing Concurrent User licenses for the "Service Desk Express" Product, regardless of the number of such licenses purchased and regardless of the number of purchases made (including future purchases), Customer is restricted via license keys to a total of (i) five Concurrent Users conducting a process in the report environment of the Crystal Reports "Web Server" product which is embedded in the "Service Desk Express" Product and (ii) two named users accessing the "Crystal Reports Professional" product which is bundled with the "Service Desk Express" Product.

Products Installed on Customer's Amazon Web Services ("AWS") Cloud Environment:

- In instances where Customer hosts the Product on Customer's AWS cloud environment, Customer is responsible for working with AWS to ensure the security of its overall AWS cloud environment and the Product.

- An Amazon Machine Image (“**AMI**”) is a special type of pre-configured operating system and virtual application software which is used to create a virtual machine within the Amazon Elastic Compute Cloud (“**EC2**”). An AMI serves as the basic unit of deployment for services delivered using EC2. In instances where BMC provides Customer with an AMI of a Product to be used on Customer’s AWS cloud environment, Customer is responsible for the security of the Product’s operation and any potential vulnerabilities in a Product AMI’s preconfigured OS stack, Application stack, and/or OS configuration.

BMC Subsystem Optimizer for IMS Restriction: The BMC Application Restart Control for IMS product and the MainView Batch Optimizer product that are shipped with the BMC Subsystem Optimizer for IMS (Subzero for IMS) License may only be used to manage, update and access IMS data as part of a Subzero for IMS implementation, unless Customer has separately licensed the BMC Application Restart Control for IMS product and the MainView Batch Optimizer product. Customer may not use the functionality of such Products for any other purpose.

BMC Subsystem Optimizer for DB2 Restriction: The BMC Application Restart Control for DB2 product and the MainView Batch Optimizer product that are shipped with the BMC Subsystem Optimizer for DB2 (Subzero for DB2) License may only be used to manage, update and access DB2 data as part of a Subzero for DB2 implementation, unless Customer has separately licensed the BMC Application Restart Control for DB2 product and the MainView Batch Optimizer product. Customer may not use the functionality of such Products for any other purpose.

- c. **UNITS OF MEASUREMENT.** The following units of measurement apply to certain Products.

per adapter: A license is required for each installation of an adapter that interfaces with the Product.

per agent: A license is required for each unit of software with the official name of Remote Sys Call Daemon or RSCD Agent that can be deployed on a physical or virtual operating system.

per application: A license is required for all unique collection of application component templates and configuration objects used to form a single logical platform defined by the Customer.

per asset: A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Other Endpoint monitored, managed or discovered by the Product. “**Client Endpoint**” means a laptop, desktop or other non-Server Computer. “**Device Endpoint**” means a personal digital assistant or similar computing device. “**Other Endpoint**” means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. “**Server Endpoint**” is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per Cisco™ UCS Server: A license is required for each Cisco Unified Computing System (UCS) Server on which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

per Client Endpoint: A license is required for each Client Endpoint. “**Client Endpoint**” means a laptop, desktop or other non-Server Computer.

per component: A license is required for all objects that represent a physical or logical part of the service model.

per concurrent access license: A license is required for the maximum number of simultaneous sessions accessing the Product. Sessions are counted in packs of 5.

per concurrent session: A license is required for the maximum number of simultaneous sessions accessing the Product.

per concurrent user: A license is required for the maximum number of individual employees or contractors of Customer to whom simultaneous access has been granted to the Product on a computer or multiple computers.

per CPU – Full Capacity: A license is required for the total number of active, physical CPUs in each Computer upon which the Product is installed or which the Product manages, either remotely or locally. “**CPU**” means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer’s programs and refers to the “socket” which can contain one or more processor cores.

per CPU – Subcapacity: A license is required for all active, physical CPUs which the Product manages, either remotely or locally. “**CPU**” means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer’s programs and refers to the “socket” which can contain one or more processor cores.

per database: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges.

per deployed robot: A license is required for all PATROL End-to-End Response Timer robots deployed.

per Device Endpoint: A license is required for each Device Endpoint. “**Device Endpoint**” means a personal digital assistant or similar computing device.

per engine: A license is required for each mainframe general purpose engine on the server upon which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

per enterprise: A license is required per Customer and per Client each, regardless of the number of times Customer installs the Product in its Enterprise or its Client’s Enterprise. “**Client**” means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

per gigabyte: A license is required for the total allocated database space of all Computers on which the Product has been installed or operated.

per gigabyte range: A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The Product may not be moved to another Computer unless the current Computer is taken out of service. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges among different Computers. For example: if Customer licenses 26-50 gigabytes, the Customer is only licensed for a maximum of 50 gigabytes in total across all the databases of the licensed Product on one particular Computer.

per installed server: A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) upon which the Product or any of its components is installed.

per instance: A license is required for all named occurrences of the Product created or installed in the Enterprise.

per Linux engine: A license is required for all engines of a mainframe Computer on which Customer is running Linux, when applicable classified by Linux Group using BMC's standard Computer classification.

per managed asset – server endpoint: A license is required for every Server Endpoint monitored, managed (directly or indirectly), or discovered by the Product(s). “**Server Endpoint**” is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies. For purposes of clarity, a Server Endpoint includes containers.

per managed asset – device endpoint: A license is required for every Device Endpoint that is monitored, managed, or discovered by the Product(s). A “**Device Endpoint**” can be any virtual or physical Non-Server Client Computer (e.g. laptop, desktop computer, PDA, smart phone); any Network device (e.g. router, switch, hub) standalone or chassis-based device/card/processor using a unique-IP address (also includes **virtual network devices managed through the IP address of its physical host**); and independent Storage (e.g. a disk array, a fiber switch, a tape library, a switch director). When applicable, the license must be computed at the appropriate tier level.

per managed component: A license is required for all objects that represent a physical or logical part of the service model managed by the Product.

per managed network device: A license is required for each Network Device managed using a unique IP-address. “**Network Device**” means a standalone or chassis-based network device/card/processor.

per managed server: A license is required for each Server managed by the Product or one of its components whether locally or remotely. When applicable, this license must be computed at the appropriate tier level based on the cumulative count of managed servers. Network Devices are not counted as Servers. This license does not include the Product's installation on or management of Integrated Facility for Linux (IFL) engines. “**Network Device**” means a standalone or chassis-based network device/card/processor.

per MIPS: A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, or which is managed or monitored by the Product. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. Computer-specific passwords will be issued for the Product.

per monitored element: A license is required for all remotely monitored elements, such as a Server, database, operating system, URL, firewall, storage, or network device.

per monitored server: A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) which the Product or one of its components is monitoring regardless of whether the Product is monitoring it locally or remotely.

per named user: A license (with a Classification at the appropriate Level, if applicable) is required for each individual employee or contractor or client of Customer. When user-based interaction is required, a license is required for all individuals for whom access has been granted to the Product on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product at any given time.

per node: A license is required for every Node which the Product manages and/or monitors. “**Node**” means a laptop, desktop, mobile device or any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per port: A license is required for each port. A port is defined as a physical connection point used by a storage device to connect other devices or systems. For the purpose of BMC licensing, all active ports (Fibre Channel, iSCSI, etc.) for all managed devices (storage arrays, filers, tape libraries, etc.) are counted. Ports on hosts, gateways and switches are not to be counted.

per project: A license is required for each specific project, facility or business unit, as the case may be specified at the time of order.

per Server Endpoint: A license is required for each Server Endpoint. “**Server Endpoint**” is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

per Service Management MIPS: A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, managed or monitored. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide.

per site: A license is required for the physical site at which the Product is installed regardless of the number of times the Product is installed.

per task: For all Control-M Products, except those that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in the Control-M "Active Jobs" databases in any 24-hour period, regardless of whether the Tasks execute or not. For the Control-M Products that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in solely the Mainframe environment's Control-M "Active Jobs" database. Tasks in the Control-M "Active Jobs" databases include all Tasks in all Distributed Systems and/or Mainframe environments in any 24-hour period (including but not limited to development, staging, QA, pre-production, production, and test environments), except that, (i) SMART folders/table and sub-folders/tables which contain scheduling definitions and are listed as tasks in the "Active Jobs" databases are not counted as Tasks, (ii) Tasks that have time zone settings may remain in the "Active Jobs" databases for up to three consecutive days, but are only counted as one Task, (iii) a Task that runs more than once during the day (with the same Order ID) is counted as one Task – this includes Tasks that are rerun and cyclic Tasks, and (iv) Tasks that are provided for by licenses under alternative Units of Measurement (i.e. tier or MIPS) are not considered Tasks under this "per task" unit of measurement. The number of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed. "**Task**" is interchangeable with "job" and means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that is scheduled to execute, as well as the scheduling criteria, flow control, and resource usage.

per terabyte: A license is required for the total aggregate storage capacity in the Enterprise.

per third-party software: A license is required for each installation of the third-party software product that interfaces with the Product.

Attachment A (Continued) - Amendment to the BMC End User License Agreement For US Federal End Users

This Amendment to End User License Agreement for All BMC Software License Agreements ("Amendment") is between BMC Software Incorporated ("BMC"), and the End User. In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

This Amendment agreed to by both parties, applies to any agency or organization ("Ordering Activity") that places an order under this Agreement. This Amendment together with the End User License Agreement for the applicable BMC Software (such license generally referred to herein as the "License Agreement"), governs the Ordering Activity's installation and use of such BMC Software. This Amendment only applies to the License Agreements for those BMC Software products sold under this Agreement. Unless expressly stated to the contrary herein, all capitalized terms in this Amendment shall have the meaning ascribed to them in the applicable License Agreement for the applicable BMC Software.

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

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

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

1. **Scope:** Any provisions restricting additions or modifications to the License Agreement are hereby superseded by this Amendment to the extent they would preclude this Amendment or any valid task orders placed under the GSA Contract. To the extent the License Agreement conflicts with this Amendment or any relevant task orders, the conflict should be resolved according to the following order of precedence: (1) Federal law, (2) the FAR, (3) terms of the Schedule Contract, (4) this Amendment, (5) any other amendment that BMC and the Ordering Activity may separately enter into to vary the terms of the License Agreement to accommodate unique license terms under a Task Order, and (6) the License Agreement. This Amendment may only be modified upon written consent of both parties.

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

3. **Remedies:** Pursuant to 28 U.S.C. § 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted (subject to the third sentence of this Section 3). Any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement (subject to the third sentence of this Section 3). Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement or any other breach of the License Agreement shall continue to apply if an equitable remedy is available under United States Federal Law. If the Ordering Activity breaches one of the following (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, BMC may terminate the License Agreement; however prior to terminating this License Agreement, BMC shall inform the Ordering Activity of one of the breaches named above as soon as possible, and provide Ordering Activity thirty (30) days from notice to cure such breach. If the breach is not cured in thirty (30) days, the Ordering Activity may terminate the Order for convenience of the Government in accordance with FAR 52.212-4(l); however, Ordering Activity has no rights to a refund, in whole or part of any License Fee paid if this License

Agreement is terminated for such breach. Nothing in this paragraph shall prevent BMC from filing a claim or limit BMC's damages under the Contract Disputes Act at 41 USC §§ 7101-7109.

4. **Payments and Deliveries:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to commit to pay any future maintenance or support costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted.

5. **Public Access to Information:** BMC agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges the License Agreement and this Amendment will be available to the public, provided however, that GSA and BMC agree that other items identified in the License Agreement (such as, without limitation, source code and other technical data) provided to the Ordering Activity is confidential and proprietary information and shall not be disclosed.

Advertisements and Endorsements: Any provisions allowing BMC to use the name or logo of GSA or any Ordering Activity to advertise or to imply an endorsement of BMC's products or services are hereby deleted. Unless specifically authorized by an Ordering Activity, such use of the name or logo any U.S. Government entity is prohibited.

6. **DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY:** Any limitation of liability in the License Agreement is hereby deleted and the following provisions shall apply:

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

Dispute Resolution and Venue: Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes relating to the License Agreement and to this Amendment shall be resolved in accordance with FAR and the Contract Disputes Act 41 U.S.C. §§ 601-613, GSA and Ordering Activity expressly acknowledge that BMC shall have standing to bring such claim under the Contract Disputes Act.

7. **Termination:** Termination of the License Agreement and this Amendment shall be governed by the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 601-613, and any provisions of the License Agreement relating to termination are hereby deleted, including any provision permitting BMC to unilaterally terminate the License Agreement subject the following exceptions:

- a. BMC is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution processed in Section 6 above or if such remedy is otherwise available to BMC under United States federal law.
- b. BMC is entitled to cancel or terminate the License Agreement if one of the events identified in Section 3 above apply.

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

9. **Governing Law:** The License Agreement and this Amendment shall be governed by the laws of the United States, unless there is no applicable law of the United States which would apply, in which case the laws of the State of Texas shall apply. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. State or U.S. Territory or district, or foreign nation, is hereby deleted.

BravoSolution
101 Lindenwood Drive
Suite 420
Malvern PA 19355

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has

not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BRAVOSOLUTION

BRAVOSOLUTION LICENSE, WARRANTY AND SUPPORT TERMS

Following the BravoSolution General Terms and Conditions are specific terms for BravoSolution Subscription Software, Support, Professional Services, Hosting Services and Hosting Service Levels.

GENERAL TERMS AND CONDITIONS.

1. RESERVED.

2. PROPRIETARY RIGHTS.

2.1 **Proprietary Rights.** Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Licensed Software and Documentation, but excluding Content. Ordering Activity agrees to reproduce and not to remove the copyright, trademark and other proprietary notices contained on or in the Licensed Software and Documentation as delivered to Ordering Activity on all copies of such Licensed Software. Ordering Activity shall not take any action to jeopardize, limit or interfere with such ownership of and rights with respect to the Licensed Software and Documentation. Contractor reserves all rights not explicitly granted in the Agreement. Ordering Activity shall not sublicense, sell or otherwise transfer the Licensed Software without the express written permission of Contractor.

2.2 **Ownership of Inventions.** The parties do not anticipate that they will undertake any development work under this Agreement, and any such development work shall be the subject of a separate written agreement between the parties. Notwithstanding the foregoing, and except as expressly set forth in an applicable written agreement, Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to all Inventions and all components or any reproductions thereof, in whole and in part. No Intellectual Property Rights in or to any Inventions is conveyed to Ordering Activity under this Agreement other than any limited grants of access rights or licenses specifically granted herein. Ordering Activity agrees not to remove any copyright, trademark or other proprietary notice contained on or in the Inventions as delivered to Ordering Activity. Contractor shall own all modifications to the Licensed Software and Documentation made by Contractor pursuant to any Services provided hereunder. Subject to the foregoing, and except as set forth in a Statement of Work, Ordering Activity shall be the sole owner of, and shall have the sole and exclusive right, title and interest in the deliverables, specifications, programs, records or other data or materials specifically developed by Contractor, its employees, agents or subcontractors in the course of Contractor's performance of this Agreement (hereinafter and hereinbefore, "Work Product").

2.3 **Other Property of the Parties.** Subject to Schedule I, Section 2.2, each party acknowledges and agrees that all software, information and related materials (including all Intellectual Property Rights thereto) owned by a party prior to this Agreement shall remain the sole and exclusive property of such party. Each party further agrees and acknowledges that such party or its employees, representatives or agents, have not acquired or will not acquire any proprietary interest in or right to, such materials. Notwithstanding the foregoing, Ordering Activity acknowledges and agrees that Contractor may use (including, without limitation, in future products) without restriction all ideas, suggestions, feedback, improvements, data, reports or the like concerning the Licensed Software or Services that may be communicated to Contractor or BravoSolution by Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time.

3. RESERVED.

4. RESERVED.

5. RESERVED.

6. RESERVED.

7. RESERVED.

8. RESERVED.

9. GENERAL

- 9.1 Survival. Section 0 ("Proprietary Rights"), Section 0 ("General") and Section 0 ("Definitions") shall survive the termination or expiration of this Agreement.
- 9.2 Reserved.
- 9.3 Reserved.
- 9.4 Reserved.
- 9.5 Reserved.
- 9.6 Compliance with Applicable Laws. Ordering Activity, at its own expense, will comply with all applicable laws and regulations regarding its activities and obligations related to this Agreement.
- 9.7 Compliance with U.S. Export Laws. Ordering Activity acknowledges that the laws and regulations of the United States, including, without limitation, the United States Export Administration Act of 1979, as amended, may restrict the export and re-export of commodities and technical data of United States origin, including the Licensed Software in any medium. Ordering Activity agrees that it will not export or re-export the Licensed Software in any form without the appropriate United States and foreign government licenses. Additionally, use of the Licensed Software may include the routing of Content to one or more countries other than the United States; therefore Ordering Activity must ensure that the Content does not contain any data that is subject to export restrictions by the U.S. or other applicable governments.
- 9.8 Notice that there are third party licensors of software products embedded in, deployed or bundled with the Licensed Software.
- 9.9 Reserved.
- 9.10 Reserved.
- 9.11 Reserved.
- 9.12 Reserved.
- 9.13 Reserved.
- 9.14 Reserved.
- 9.15 Reserved.
- 9.16 Reserved.
- 9.17 Reserved.
- 9.18 Reserved.
- 9.19 Reserved.

10. DEFINITIONS.

- 10.1 "Agreement" means the terms and conditions herein.
- 10.2 "Content" means any all Ordering Activity sourcing materials and proposal components, data, files, and information collected, received, transmitted, interpreted or created by or through the Licensed Software, including, but not limited to, Ordering Activity designs, trademarks, logos, text, images, graphics, clips, and other material.
- 10.3 "Commencement Date" means the date on which the Licensed Software is first accessible by the Ordering Activity.
- 10.4 "Confidential Information" means any and all proprietary or non-public information disclosed by one party (the "Discloser") to the other party (the "Recipient") pursuant to this Agreement, which is in written, graphic, machine readable or other tangible forms, or oral, perceived or intangible information, which the Discloser designates as being confidential or proprietary or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential, including without limitation, the terms and conditions of this Agreement.
- 10.5 "Documentation" means standard manuals, data models, flow charts and other materials regarding the use of the Licensed Software and generally supplied by Contractor to Ordering Activity, whether in printed or electronic format, as well as complete or partial copies of the foregoing.
- 10.6 "Error" means a reproducible programming error or bug in the Licensed Software that results in the failure of the Licensed Software to comply substantially with the Documentation, including any known computer viruses, Trojan horses, worms, trap doors, time bombs, or other code designed to be harmful.
- 10.7 "Hosting Services" shall have the meaning set forth under the section with the heading Hosting Services.
- 10.8 "Hosting Term" means the period of time that Contractor through BravoSolution shall provide Hosting Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.
- 10.9 "Intellectual Property" means any and all trade secrets, patents, copyrights, trademarks, service marks, trade names, domain names, trade dress, URLs, brand features, know-how and similar rights of any type under the laws of any applicable governmental authority, including, without limitation, all applications and registrations relating to any of the foregoing.
- 10.10 "Intellectual Property Rights" means all rights in and to Intellectual Property.
- 10.11 "Inventions" means, collectively and without limitation, any and all inventions (of any type), ideas, discoveries, software, methods, developments, concepts, processes, improvements, and all other works of authorship, in whole or in part, whether or not patentable or copyrightable, conceived or made by BravoSolution or BravoSolution personnel pursuant to any this Agreement, any SOW or in the course of BravoSolution's performance of any Services provided hereunder regardless of any participation, assistance or cooperation by Ordering Activity or its personnel in connection therewith; provided, however, that Inventions shall exclude (i) the Licensed Software and other pre-existing BravoSolution Intellectual Property, (ii) any pre-existing intellectual property owned by Ordering Activity, and (iii) Ordering Activity's Confidential Information.
- 10.12 "Licensed Software" means (i) the proprietary software product which is developed and owned or licensed by Contractor (including any Third Party Software incorporated therein) identified on an applicable Order Form (ii) any Documentation for the Licensed Software, and (iii) any Updates delivered to Ordering Activity pursuant to this Agreement.
- 10.13 "License Term" means the period of time the license of the Licensed Software granted hereby shall be in effect which shall commence upon the Commencement Date and continue for the period set forth on an applicable Order Form.
- 10.14 "Maintenance Services" shall have the meaning set forth in Section 3.1 hereof under the heading Support Terms below.

- 10.15 "Maintenance Term" shall mean the period of time Contractor shall render the Maintenance Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.
- 10.16 "Order Form" means one or more documents that are executed by the parties in connection with this Agreement.
- 10.17 "Services" means the software implementation, consulting and other professional services that may be provided by Contractor to Ordering Activity under this Agreement as described in one or more SOWs.
- 10.18 "Source Code" means the source code version of the Licensed Software.
- 10.19 "SOW" means a Statement of Work that is executed by the parties in connection with this Agreement. Each fully executed SOW shall be deemed an attachment to the Agreement and incorporated by reference hereto.
- 10.20 "Term" shall mean the period of time this Agreement shall be in effect, which shall commence upon the Effective Date and continue until the end date listed on the Order Form.
- 10.21 "Third Party Software" means certain software licensed by Contractor and included or embedded in the Licensed Software.
- 10.22 "Update" means (a) subsequent releases of the Licensed Software (not including any Third Party Software) that (i) add new features, functionality, and/or improved performance or, (ii) operate on new or other databases, operating systems, or client or server platforms; and (b) Error fixes, patches, workarounds, and maintenance releases; provided, however that Updates shall not include new or separate products. Contractor shall not provide any Updates to Third Party Software.

SUBSCRIPTION SOFTWARE LICENSE TERMS AND CONDITIONS

1. LICENSE.

- 1.1 Grant of Rights. Subject to all of these terms and conditions, Contractor grants to Ordering Activity a limited term, worldwide, non-exclusive, non-transferable, license (i) to access, use, display and perform the Licensed Software in object code form solely in accordance with the Documentation; (ii) for any web based functionality provided within the Licensed Software, to allow authorized participants to use the Licensed Software for the purpose of accessing and using the Licensed Software via a standard Internet Explorer web browser in the manner and to the extent provided for by the Documentation; and (iii) to use the Documentation solely for the purposes of supporting Ordering Activity's use of the Licensed Software in accordance with the terms of the Documentation. All rights not specifically granted shall be reserved to Contractor.
- 1.2 Restrictions. Ordering Activity shall not directly or indirectly (i) download, use or otherwise copy all or any portion of the Licensed Software or Documentation, except as stated in these terms; (ii) cause or permit the reverse engineering, modification, disassembly or decompilation of the Licensed Software or any portion thereof; (iii) modify or change the Licensed Software (except to configure the Licensed Software by means of the user-enabled features of the Licensed Software); (iv) create any derivative works of the Licensed Software or Documentation; (v) sublicense, rent, loan, lease, transfer, grant access to or otherwise distribute the Licensed Software to any other person or entity, except as stated otherwise in these terms; or (vi) use the Licensed Software or Documentation to provide services to third parties in a time-sharing, service bureau or application service provider arrangement.

2 LICENSED SOFTWARE WARRANTY.

- 2.1 Scope of Warranty. Contractor warrants that during the License Term the Licensed Software will be substantially free from Errors. In the event that the Ordering Activity discovers that the Licensed Software contains Errors during any such period, then Ordering Activity shall promptly report such Errors to Contractor in writing. Ordering activity shall report such Errors in the form reasonably requested by Contractor so as to enable Contractor to reproduce, verify, diagnose and correct each Error. Contractor's sole obligation and Ordering Activity's sole and exclusive remedy for Errors will be that Contractor will use commercially reasonable efforts to provide a correction or workaround for each Error in the Licensed Software reported by Ordering Activity to Contractor during the License Term.
- 2.2 Exclusion. Contractor will have no obligation under this Agreement with respect to Errors caused by (i) a malfunction of computer hardware or software other than the Licensed Software, (ii) any modification of or change to the Licensed Software that is made by Ordering Activity, or (iii) any combination, operation or use of the Licensed Software with systems or other software other than those described herein or the Documentation, or that may otherwise be approved by Contractor.

3 MAINTENANCE SERVICES.

- 3.1 Subject to Ordering Activity's payment of any Maintenance Fees set forth on the Order Form, during a Maintenance Term Contractor will provide the following Maintenance Services:
- 3.2 Updates for the Licensed Software as such Updates are made generally available by Contractor to Ordering Activity
- 3.3 Commercially reasonable efforts to effectuate prompt resolution of Errors in the Licensed Software in accordance with generally accepted industry standards ("Software Support") see the specific terms in the section below entitled Software Support. Contractor will communicate the problem status regularly to Ordering Activity. Similarly, Ordering Activity will communicate with Contractor regarding any change in problem status, and will be available to Contractor for ongoing clarifications.
- 3.4 Reserved.
- 3.5 Excluded Services. Except as otherwise provided herein, the Maintenance Services do not apply to or include: (i) Software Support required as a result of use or maintenance of Licensed Software other than in accordance with these terms herein; (ii) Software Support required as a result of database errors, content or other inputs; (iii) user education and training, except as described herein; (iv) correction of or assistance regarding problems caused by operator errors, including but not limited to the entry of incorrect data and improper procedures; (v) hardware problems experienced by Ordering Activity; or (vi) correction of errors attributable to software other than the Licensed Software (collectively "Excluded Services").
- 3.6 Reserved.
- 3.7 Contact Person(s). Ordering Activity shall appoint one (1) person as the principal point of contact for the communication of Errors to Contractor and for the receipt of Error fixes, work-arounds, patches and Updates, if any. Additionally, Ordering Activity may appoint another person as a back up for the principal contact. Contractor will provide an account manager who will service Ordering Activity and will monitor Ordering Activity's support needs.

4 DISCLAIMER.

- 4.1 WITH THE EXCEPTION OF THE EXPRESS WARRANTY PROVIDED IN SECTION 2.1 ("SCOPE OF WARRANTY"), AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED SOFTWARE IS LICENSED TO ORDERING ACTIVITY ORDERING ACTIVITY "AS IS," AND CONTRACTOR AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE LICENSED SOFTWARE AND ANY SERVICES FURNISHED OR OTHERWISE PROVIDED HEREUNDER, IF ANY. IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.
- 4.2 LIMITED WARRANTY FOR MAINTENANCE SERVICES.
- 4.3 CONTRACTOR WARRANTS THAT THE MAINTENANCE SERVICES WILL BE (I) PERFORMED IN COMPLIANCE WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES; (II) PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS AND (III) PERFORMED BY PERSONNEL QUALIFIED TO PERFORM THE TASKS NECESSARY FOR PROVIDING THE MAINTENANCE SERVICES. . CONTRACTOR'S SOLE OBLIGATION, AND ORDERING ACTIVITY ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDY IN THE CASE OF A BREACH OF SUCH WARRANTIES WILL BE FOR CONTRACTOR TO RE-PERFORM SUCH MAINTENANCE SERVICES IN CONFORMANCE WITH SUCH APPLICABLE LAWS, GENERALLY ACCEPTED INDUSTRY STANDARDS OR USING QUALIFIED PERSONNEL, AS APPLICABLE. EXCEPT AS SET FORTH HEREIN, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE MAINTENANCE SERVICES FURNISHED OR OTHERWISE PROVIDED HEREUNDER.

SOFTWARE SUPPORT TERMS

Contractor provides thorough 24x7x365 global Software Support, capable of handling all functional and technical problems.

Software Support is available to all users, buyers and suppliers.

Software Support contact information:

Domestic / Toll Free Phone:	1-877-528-2947
International / Toll Free Phone:	+00-800-2255-4626
Email:	support@bravosolution.com

Software Support Hours of Operation (Staffed):

24x5 staffed support: Sundays 2100 hours thru Fridays 2000 hours Eastern Prevailing Time

After Hours Support:

For urgent assistance after staffed support hours, support specialists carry cellular phones and will return calls within one hour of receipt.

Severity

Priority	Severity	Description
Urgent	1	Time Critical system problem. BravoSolution production environment is inoperative and business is being impacted and no work can be done. No work around exists and use of Licensed Software functionality is materially compromised.
High	2	Time Critical system problem. BravoSolution production environment is adversely affected or is inoperative. Productivity is being compromised; work can be done but not at full capacity. The problem is time critical and affecting more than 1 user.
Medium	3	Non-time critical system problem. BravoSolution production environment has encountered a non-critical problem or defect and / or questions have arisen on the use of the system. Affects at least 1 user. (Issues involving a single user where they are not able to use whole or part of the system).
Low	4	Non-time critical system problem. Low priority request with no system impact, such as enhancements, feature request or other non-critical problem. Non-time critical system problem affecting only one user.

Escalation

Severity Level	Initial Response	Follow-up Response	Service Level/Resolution

Urgent Incident (Severity 1)	30 Minutes	1 Hour	The Error will be routed to BravoSolution development resources within 30 minutes of Ordering Activity support notification and resolution efforts will be on going until the Error is resolved. The target time-to-resolution is 24 hours from the time Ordering Activity support notifies development of the Error.
High Incident (Severity 2)	1 Hour	1 Hour	The Error will be routed to BravoSolution development resources within 1 hour of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The target time-to-resolution is 1 business day from the time Ordering Activity support and development is notified of the Error.
Medium Incident (Severity 3)	1 Hour	24 Hours	The Error will be routed to development within 24 hours of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The repair may be scheduled for the next product release and is determined by Ordering Activity Support, Product Management and Development collectively.
Low Incident (Severity 4)	N/A		Used for Documentation Errors, Enhancement Requests, and other minor issues or concerns.

PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. SERVICES.

1.1 Subject to these terms and conditions, Ordering Activity hereby engages Contractor to provide the Services. Unless otherwise specified in a SOW, the Services shall be performed at the facilities and location designated by Contractor. The parties shall each designate an account director or project manager who shall work together to manage the timely and successful implementation of the Services. Subject to these terms and the applicable SOW Contractor may subcontract some or all of the Services to be performed hereunder. In performing the Services, Contractor shall use commercially reasonable efforts to adhere to any timetables set forth in an SOW.

1.2 Reserved.

1.3 Ordering activity shall assist Contractor in the performance of the Services by making available to Contractor on a timely basis all equipment, software, documentation, information, office and working space, Internet connectivity and personnel reasonably requested by Contractor from time to time. Ordering Activity shall also ensure that the Ordering Activity personnel so made available to Contractor are familiar with Ordering Activity requirements and have the expertise and capabilities necessary to so assist Contractor.

1.4 Performance Generally. Ordering Activity acknowledges and agrees that Contractor's obligations and commitments, and in particular any timetables or prices, are subject to Ordering Activity's performance of its obligations and the performance by third parties of their respective obligations, as well as the realization of any assumptions that are stated in the applicable SOW or in another document executed by Contractor and Ordering Activity.

2. RESERVED.

3. RESERVED.

4. SERVICES WARRANTY.

4.1 Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry. BRAVOSOLUTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

HOSTING TERMS AND CONDITIONS

1. HOSTING SERVICES.

1.1 In consideration for Ordering Activity's payment of the Hosting Fee(s) set forth in the Order Form and commencing as of the date Contractor begins hosting the Licensed Software on BravoSolution controlled servers, Contractor shall provide the Hosting Services to Ordering Activity as specified herein.

1.2 Hosting on BravoSolution Servers. BravoSolution shall make available one or more BravoSolution controlled servers for purposes of hosting the Licensed Software and the Content in accordance with the details set forth on an applicable Order Form. Contractor shall be responsible for installing the Licensed Software on such servers. At all times, BravoSolution or its subcontractor shall retain ownership of the BravoSolution servers, together with any associated equipment, hardware, software and other infrastructure components utilized by BravoSolution in providing services to Ordering Activity hereunder.

2. DISCLAIMER.

2.1 By performing the Hosting Services, Contractor through BravoSolution is providing Ordering Activity with access to the Licensed Software via the Internet. Ordering Activity hereby acknowledges that (i) the Internet is not owned, operated, managed by or in any way affiliated with Contractor or BravoSolution or any of its Affiliates; (ii) the Internet is a separate network of computers independent of Contractor and BravoSolution; (iii) Ordering Activity's use of the Internet is solely at Ordering Activity's own risk and is subject to all applicable laws, rules and regulations; and (iv) access to the Internet and the Licensed Software may be dependent on numerous factors, technologies and systems, many of which are beyond Contractor's authority and control and for which Contractor and BravoSolution shall not be liable hereunder. Ordering Activity agrees that Contractor shall not be held responsible in any way for outages or downtime resulting from causes beyond the control of Contractor or BravoSolution (e.g., telecommunications disturbances, packet loss un-attributable to a specific cause, or other internet outages of any kind).

2.2 2.2 THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75—PRICE REDUCTIONS, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION.

3. USAGE OF THE LICENSED SOFTWARE.

3.1 Contractor reserves the right to, from time to time, monitor the Licensed Software hosted on its servers only for the purposes of providing the services. Ordering Activity hereby acknowledges and agrees that Contractor and BravoSolution exercises no control whatsoever over the material transmitted or received on or through the Licensed Software by Ordering Activity. Ordering Activity shall ensure that all materials that transmitted or received on or through the Licensed Software comply with all applicable laws, rules and regulations. Without limiting the foregoing sentence, Ordering Activity hereby acknowledges that it will not violate any of the following policies respecting usage of the Licensed Software:

3.1.1 The transmission of spam (unsolicited commercial messages or communications in any form) on or through the Licensed Software is prohibited;

3.1.2 The transmission of any material on or through the Licensed Software in violation of any applicable laws or regulations is prohibited. This includes, but is not limited to, unauthorized transmission of copyrighted material, material protected by trade secret, or material that is otherwise deemed to be proprietary, as well as transmission of material that is legally judged to be threatening or obscene or that, in Contractor's reasonable business discretion, is deemed inappropriate or improper;

3.1.3 Intentionally omitting, deleting, forging or misrepresenting transmission information (including, without limitation, headers, return addressing information and Internet Protocol addresses) or taking any other actions intended to misrepresent or hide Ordering Activity's or any user's identity or contact information is prohibited.

3.2 Reserved.

4. SECURITY.

4.1 Contractor represents and warrants that BravoSolution has implemented and maintains the Hosting Services at reputable third party Internet service providers and hosting facilities and that it shall use commercially reasonable technical, physical and procedural controls at least as rigorous as accepted industry practices to protect Ordering Activity's Content and Confidential Information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors to Ordering Activity's systems and Content, whether by accident or otherwise. The parties acknowledge, however, that Contractor and BravoSolution cannot, given the nature of current computer systems and networks, guarantee absolute security of the Licensed Software, or any activity occurring on or through it.

5. PERFORMANCE

5.1 Manner of Performance. Contractor may subcontract with third parties for the purpose of performance of the Hosting Services; provided, however, that Contractor shall remain responsible for ensuring its subcontractors comply with the terms and conditions of this Agreement. BravoSolution shall have the right to relocate the Licensed Software, the BravoSolution controlled servers or any of BravoSolution's operations at any time.

5.2 Cooperation and Assistance. Ordering Activity shall provide Contractor with reasonable cooperation and assistance in connection with performance of its obligations hereunder.

6. ORDERING ACTIVITY CONTENT.

6.1 Ownership. Contractor acknowledges and agrees that the Content and any intellectual property rights in or relating thereto are and shall continue to be the sole and exclusive property of Ordering Activity or its third-party licensors. Contractor acknowledges that it shall not, by virtue of this Agreement, acquire any ownership interest in the Content or any intellectual property rights in or

relating thereto. Ordering Activity reserves all rights to the Content not expressly granted to Contractor hereunder. Ordering Activity represents and warrants that the Content shall not include any personally identifiable information.

License Grant. During the Hosting Services term, Ordering Activity hereby grants to BravoSolution through Contractor a non-exclusive, royalty-free, worldwide right and license to use, reproduce, display, perform and transmit the Content solely on or in conjunction with the Licensed Software, as contemplated hereunder, subject to and in accordance with the terms, conditions and provisions of this Agreement. Backups. Contractor shall make daily, incremental backups five times a week and one complete weekly backup of the Content. Should the need arise, Contractor shall use commercially reasonable efforts to reconstruct the Content from its backup.

HOSTING SERVICE LEVELS

Availability and Maintenance. Contractor shall make the Licensed Software available for access twenty-four (24) hours per day, seven (7) days per week, excluding times for scheduled maintenance to be performed by or on behalf of Contractor ("Scheduled Maintenance"). Scheduled Maintenance shall take place between 2200 hours Friday and 1600 hours Sunday, Eastern Prevailing Time, or such other time as required.

Section - Service Levels.

- . Availability. Contractor will provide no less than 98% Total Time of Availability, which will be calculated on a monthly basis, as follows:
Scheduled Maintenance will not be included as downtime in calculation of monthly availability. When the application is unavailable due to causes beyond Contractor's reasonable control, such as Internet outages, weather, acts of God, Ordering Activity system issues, or utility system outages, such unavailability will not be included as downtime. Unscheduled and emergency maintenance will be included as downtime in monthly availability calculation. The availability of the system is calculated in the following way:

$$\text{Total Time of Availability} = \text{Total Time (24/7)} - \text{Scheduled Maintenance} - \text{Uncontrollable Outages}$$

$$\% \text{ Availability} = (\text{Total Time of Availability} - \text{Unscheduled/Emergency Maintenance}) * 100 / \text{Total Time of Availability}$$
- . Maintenance Notifications. Contractor will communicate with the Ordering Activity's Designated Company Administrator(s) in the event that unscheduled maintenance or emergency maintenance is required. An email or phone call (including voice mail) will constitute sufficient notification of impending maintenance of any type. Unscheduled and Emergency maintenance windows may involve maintenance/repairs for which advance notification is not possible. Contractor will employ best efforts to notify client of Unscheduled and Emergency maintenance windows at the earliest time possible.
- . Maintenance Scheduling and duration. Total Scheduled Maintenance will not exceed 72 hours in any given month.

Section - Backups/Recovery Actions.

- . redundant RAID for all data storage of Ordering Activity data.
- . incremental file system backups nightly and shall perform full file system backups weekly.
- . maintain journaling of database transactions.
- . perform database exports nightly, prior to scheduled file system backups.
- . perform cold database backups at regular intervals.
- . transport tapes of file systems and data backups off-site to a secure storage location on a weekly basis.

Section - Monitoring.

- . Application monitoring. BravoSolution shall employ a transaction monitoring system in order to verify application functionality for uptime reporting purposes and for the purpose of providing notification in the event of failures. BravoSolution shall check the application at least four times per hour for functionality.
- . System Level monitoring. BravoSolution shall employ a monitoring system in order to gather system level metrics that relate to utilization and performance.

Brocade Communications Systems, Inc.
1745 Technology Drive
San Jose, CA 95110

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

BROCADE COMMUNICATIONS SYSTEMS, INC.

BROCADE COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

- a) **"Hardware"** which includes any Brocade hardware products, and any related documentation and manuals.
- b) **"Software"** which includes any Brocade software licensed by Contractor to Ordering Activity in the form of any bundled firmware, or standalone software products, or other software, any backup copies of such software, and any related documentation and manuals provided therewith; and shall include any Upgrades (as defined below) or modified versions of such software provided to Ordering Activity by Contractor.
- c) **"Products"** which includes, either an individual component of Brocade Hardware and/or Software or any combination thereof.
- d) **"Support"** which includes maintenance and/or support services for the chosen Products.

2. SOFTWARE SPECIFIC TERMS.

2.1 LICENSE GRANT. EACH SOFTWARE PRODUCT MAY HAVE DIFFERENT LICENSING GRANTS AND RESTRICTIONS DEPENDING ON THE NATURE OF THE SOFTWARE. THE SPECIFIC LICENSING TERMS, MODEL AND RESTRICTIONS RELATED THERETO FOR EACH SOFTWARE PRODUCT SHALL BE SET FORTH IN THE RELEVANT CONTRACTOR QUOTATION. TO THE EXTENT THAT NO SUCH LICENSING TERMS EXIST, THE FOLLOWING LICENSE GRANT SHALL BE APPLICABLE: SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PAYMENT OF THE APPLICABLE LICENSE FEES, BROCADE AND ITS SUPPLIERS GRANT TO CUSTOMER A NON-EXCLUSIVE, NON-TRANSFERABLE LICENSE TO USE THE APPLICABLE SOFTWARE IN OBJECT CODE FORM SOLELY FOR INTERNAL PURPOSES AND SOLELY FOR THE PURPOSES SET FORTH IN THE BROCADE PRODUCT DOCUMENTATION.

2.2 ADDITIONAL SOFTWARE TERMS. THE FOLLOWING TERMS SHALL APPLY TO ALL SOFTWARE PROVIDED PURSUANT TO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY AND ALL SOFTWARE DELIVERED HEREUNDER IS LICENSED, NOT SOLD. ORDERING ACTIVITY SHALL HAVE NO RIGHT, AND ORDERING ACTIVITY SPECIFICALLY AGREES NOT TO, AND NOT TO PERMIT THIRD PARTIES TO: (I) MODIFY, ADAPT, CHANGE, ENHANCE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE; (II) COPY, OR OTHERWISE REPRODUCE THE SOFTWARE IN WHOLE OR IN PART; (III) DECOMPILE, TRANSLATE, REVERSE ENGINEER, DISASSEMBLE OR OTHERWISE REDUCE THE SOFTWARE TO HUMAN-READABLE FORM; (IV) USE THE SOFTWARE ON ANY APPLIANCES/HARDWARE IN EXCESS OF THE NUMBER OF APPLIANCES/HARDWARE FOR WHICH IT IS LICENSED; (V) REMOVE, MODIFY OR OTHERWISE TAMPER WITH ANY NOTICE OR LEGEND ON ANY LABELING ON ANY PHYSICAL MEDIA CONTAINING THE SOFTWARE OR (VI) USE THE SOFTWARE FOR PROVIDING SERVICE BUREAU OR OTHER RELATED SERVICES TO THIRD PARTIES. ORDERING ACTIVITY'S RIGHTS IN THE SOFTWARE WILL BE LIMITED TO THOSE EXPRESSLY GRANTED HEREIN, AND ORDERING ACTIVITY SHALL HAVE NO RIGHT TO SUBLICENSE THE SOFTWARE. BEFORE DECOMPILING THE SOFTWARE FOR THE PURPOSES OF OBTAINING THE INTERFACE INFORMATION, ORDERING ACTIVITY WILL REQUEST CONTRACTOR THROUGH BROCADE TO PROVIDE IT WITH THIS INFORMATION. CONTRACTOR WILL CHARGE ORDERING ACTIVITY FOR ITS CORRESPONDING SERVICES AT THE APPLICABLE GSA RATES.

- 2.3 NUCLEAR, AVIATION OR LIFE SUPPORT APPLICATION.** CONTRACTOR SPECIFICALLY DISCLAIMS LIABILITY FOR USE OF THE PRODUCTS IN CONNECTION WITH THE DESIGN, CONSTRUCTION, MAINTENANCE AND/OR OPERATION OF ANY (I) NUCLEAR FACILITY, (II) AIRCRAFT, AIRCRAFT COMMUNICATION OR AIRCRAFT GROUND SUPPORT SYSTEM, OR (III) SAFETY OR HEALTH CARE CONTROL SYSTEM, INCLUDING WITHOUT LIMITATION, LIFE SUPPORT SYSTEM.
- 2.4 OPEN SOURCE SOFTWARE.** CERTAIN COMPONENTS OF THE SOFTWARE, INCLUDING SOFTWARE DESIGNED TO INTEROPERATE WITH THE SOFTWARE, MAY INCORPORATE OR BE BASED ON "OPEN SOURCE" SOFTWARE. SUCH SOFTWARE IS SUBJECT TO THE APPLICABLE OPEN SOURCE LICENSE (E.G., GNU GENERAL PUBLIC LICENSE) AND IS NOT SUBJECT TO THIS AGREEMENT. TO OBTAIN A COPY OF THE SOURCE CODE AND APPLICABLE LICENSING TERMS FOR THE OPEN SOURCE SOFTWARE USED BY BROCADE, PLEASE SEE [HTTP://WWW.BROCADE.COM/SUPPORT/OSCD.JSP](http://www.brocade.com/support/oscd.jsp), AS MAY BE AMENDED FROM TIME TO TIME. CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES WITH RESPECT TO SUCH OPEN SOURCE SOFTWARE.
- 2.5 RESTRICTED RIGHTS.** THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION PROVIDED UNDER THIS AGREEMENT INCORPORATE COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE, AND IS IN ALL RESPECTS PROPRIETARY PROPERTY BELONGING SOLELY TO CONTRACTOR OR ITS LICENSORS. IF ORDERING ACTIVITY IS ACQUIRING THE SOFTWARE ON BEHALF OF ANY PART OF THE UNITED STATES GOVERNMENT, THE FOLLOWING PROVISIONS APPLY. THE OBJECT CODE AND ACCOMPANYING DOCUMENTATION ARE DEEMED TO BE "COMMERCIAL COMPUTER SOFTWARE" AND "COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION", RESPECTIVELY, PURSUANT TO DFAR SECTION 227.7202 AND FAR 12.212(B), AS APPLICABLE. ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF THE OBJECT CODE AND/OR THE ACCOMPANYING DOCUMENTATION BY THE U.S. GOVERNMENT OR ANY OF ITS AGENCIES SHALL BE GOVERNED SOLELY BY THE TERMS OF THIS AGREEMENT AND SHALL BE PROHIBITED EXCEPT TO THE EXTENT EXPRESSLY PERMITTED BY THE TERMS OF THIS AGREEMENT. ANY TECHNICAL DATA PROVIDED THAT IS NOT COVERED BY THE ABOVE PROVISIONS IS DEEMED TO BE "TECHNICAL DATA COMMERCIAL ITEMS" PURSUANT TO DFAR SECTION 252.227.7015(A). ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF SUCH TECHNICAL DATA SHALL BE GOVERNED BY THE TERMS OF DFAR SECTION 252.227.7015(B).
- 2.6 AUTHORIZED LICENSES FOR USERS.** ORDERING ACTIVITY'S USE OF THE SOFTWARE AND THE APPLICABLE FEES RELATED THERETO ARE BASED UPON A SPECIFIC LICENSING MODEL, E.G., CONCURRENT USERS, NAMED USERS, PER TERABYTE USED, OR RIGHTS LIMITED TO SPECIFIC NETWORKING SWITCHES, SERVERS OR PLATFORMS ("AUTHORIZED LICENSES"). THE APPLICABLE LICENSING MODEL AND THE NUMBER OF AUTHORIZED LICENSES WILL BE SET FORTH IN CONTRACTOR'S QUOTATION OR IN THE BROCADE DOCUMENTATION FOR SUCH SOFTWARE. FOR CERTAIN SOFTWARE, ORDERING ACTIVITY MAY HAVE THE RIGHT TO INCREASE THE NUMBER OF AUTHORIZED LICENSES FOR THE APPLICABLE SOFTWARE PROVIDED THAT ORDERING ACTIVITY PAYS CONTRACTOR THE ADDITIONAL LICENSE AND SUPPORT FEES, AND SUCH FEES SHALL BE PAID TO CONTRACTOR PRIOR TO INITIATING SUCH INCREASES. ORDERING ACTIVITY AGREES TO WORK IN GOOD FAITH WITH CONTRACTOR TO ACCURATELY COUNT THE AUTHORIZED LICENSES. ORDERING ACTIVITY CONSENTS TO AND SHALL TAKE ALL ACTIONS NECESSARY FOR THE INSTALLATION AND USE OF CERTAIN USER AUTHORIZATION SOFTWARE TO VERIFY THE LOCATION AND NUMBER OF ORDERING ACTIVITY'S AUTHORIZED LICENSES.

3. SUPPORT OBLIGATIONS.

3.1 GENERAL SUPPORT OBLIGATIONS.

- A) TECHNICAL SUPPORT.** PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE REMEDIAL TELEPHONE, EMAIL, ONLINE AND/OR ONSITE ASSISTANCE FOR THE PRODUCTS LISTED ON A CONTRACTOR SUPPORT QUOTATION ("COVERED HARDWARE" AND "COVERED SOFTWARE", RESPECTIVELY OR "COVERED PRODUCT(S)" COLLECTIVELY) BASED ON THE APPLICABLE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY. WHENEVER ORDERING ACTIVITY SUBMITS A SUPPORT ISSUE TO CONTRACTOR, THROUGH BROCADE RELATED TO THE COVERED PRODUCTS ("PROBLEM"), CONTRACTOR, THROUGH BROCADE, WILL CLASSIFY THE PROBLEM ACCORDING TO THE ORDERING ACTIVITY'S "SEVERITY" LEVEL THAT DEFINES THE PROBLEM, BASED ON THE ORDERING ACTIVITY SEVERITY LEVEL DESCRIPTIONS LOCATED IN THE SUPPORT PLAN POLICIES DOCUMENT AT BROCADE'S WEBSITE, WHICH DOCUMENT MAY BE UPDATED FROM TIME TO TIME IN BROCADE'S DISCRETION. ADDITIONAL CHARGES MAY APPLY IF ORDERING ACTIVITY CONTACTS BROCADE WHEN IT IS LATER DETERMINED THAT THE CAUSE WAS NOT RELATED TO THE COVERED PRODUCTS. CONTRACTOR, THROUGH BROCADE, WILL ONLY PROVIDE SUPPORT FOR THE BASELINE LICENSED SOFTWARE, AND WILL NOT SUPPORT ANY CUSTOMIZATIONS OR UNIQUE IMPLEMENTATIONS OF THE SOFTWARE UNDER ITS GENERAL SUPPORT OBLIGATIONS, AND ANY SUCH ASSISTANCE WILL BE PROVIDED ON A TIME AND MATERIAL BASIS.

- B) SUPPORT TERM AND RENEWAL.** THE INITIAL TERM APPLICABLE TO EACH SUPPORT QUOTATION WILL BEGIN (I) IN THE CASE OF NEWLY ACQUIRED PRODUCTS, ON THE DATE OF SHIPMENT; OR (II) IN THE CASE OF PREVIOUSLY SHIPPED PRODUCTS, ON THE EFFECTIVE DATE SPECIFIED ON CONTRACTOR'S QUOTATION, AND SUCH SERVICES SHALL CONTINUE THROUGH THE TERM STATED ON THE QUOTATION. THEREAFTER, SUCH SUPPORT WILL ONLY BE RENEWED BASED ON CONTRACTOR'S RENEWAL QUOTATION TO ORDERING ACTIVITY AND RECEIPT OF ORDERING ACTIVITY'S CORRESPONDING PURCHASE ORDER. FOR THE FIRST RENEWAL PERIOD, SUPPORT MAY BE RENEWED FOR THE NEXT TERM AT THE SAME RATE AS THE INITIAL SUPPORT TERM.
- C) COVERED PRODUCTS.** PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SUPPORT FOR THE COVERED PRODUCTS, AS DESCRIBED IN A CONTRACTOR QUOTATION. ANY CHANGES TO THE COVERED PRODUCTS SHOULD BE REPORTED TO CONTRACTOR, THROUGH BROCADE, PRIOR TO MAKING ANY SUCH CHANGES, AND SUCH CHANGES COULD RESULT IN MODIFICATIONS TO CONTRACTOR'S OBLIGATIONS AND THE APPLICABLE SUPPORT FEES. ORDERING ACTIVITY IS RESPONSIBLE FOR ACTIVATING THE SUPPORT PLAN FOR ALL COVERED PRODUCTS, INCLUDING CHANGES MADE TO THE COVERED PRODUCT LIST, VIA BROCADE'S WEBSITE UNDER "SUPPORT".
- D) RECERTIFICATION OF PRODUCTS.** FOR ANY PRODUCTS WHERE ORDERING ACTIVITY REQUESTS SUPPORT ON PRODUCTS PREVIOUSLY SUPPORTED BY ANOTHER PARTY OR FOR WHICH SUPPORT SERVICES HAVE LAPSED, CONTRACTOR MAY REQUIRE THAT THE PRODUCT BE RECERTIFIED. UPON RECEIPT OF PURCHASE ORDER, CONTRACTOR, THROUGH BROCADE, WILL COMMENCE MAINTENANCE IN ACCORDANCE WITH THE START DATE ON THE QUOTATION AND WILL SCHEDULE THE RECERTIFICATION ACTIVITY. SHOULD A REQUEST FOR REMEDIAL MAINTENANCE BE RECEIVED PRIOR TO THE COMPLETION OF THE RECERTIFICATION, SUCH SERVICE MAY BE DELAYED (INCLUDING RELATED RESPONSE TIME COMMITMENTS) UNTIL SUCH TIME AS THE RECERTIFICATION IS COMPLETED. SHOULD CONTRACTOR, THROUGH BROCADE DEEM THAT THE PRODUCTS ARE UNSUPPORTABLE, ORDERING ACTIVITY WILL BE NOTIFIED ACCORDINGLY AND A CREDIT OR REFUND PROVIDED FOR ANY APPLICABLE PREPAID SUPPORT FEES.
- E) THIRD PARTY PRODUCT INTEROPERABILITY.** DUE TO INTEROPERABILITY REQUIREMENTS, ORDERING ACTIVITY AGREES THAT THE USE OF ANY THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO, OPTICAL TRANSCEIVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY BROCADE MAY CAUSE ERRORS IN THE OPERATION OF THE PRODUCTS OR MAY CAUSE ADDITIONAL RESOLUTION TIME FOR CONTRACTOR, THROUGH BROCADE UNDER ITS SUPPORT OBLIGATIONS HEREUNDER. ORDERING ACTIVITY ACKNOWLEDGES THAT USE OF ANY SUCH THIRD PARTY PRODUCTS SHALL RELEASE CONTRACTOR FROM THE PERFORMANCE OF CONTRACTOR'S SUPPORT OBLIGATIONS RELATED THERETO, AND ORDERING ACTIVITY AGREES TO PAY CONTRACTOR FOR ANY TIME SPENT DIAGNOSING SUCH PROBLEMS WHICH SHALL BE BILLED AT CONTRACTOR'S HOURLY GSA RATE. CONTRACTOR MAY BE PREPARED IN ITS DISCRETION TO PROVIDE ADDITIONAL PROFESSIONAL SERVICES TO RESOLVE ANY SUCH PROBLEMS IN SUCH CIRCUMSTANCES, BUT SHALL NOT BE OBLIGED TO DO SO.
- F) CANCELLATION.** ORDERING ACTIVITY MAY CANCEL SUPPORT SERVICES AT ANY TIME ON THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONTRACTOR. IN SUCH EVENT, CONTRACTOR, THROUGH BROCADE, SHALL REFUND ANY SUPPORT FEES PREPAID FOR THE PERIOD AFTER SUCH TERMINATION, LESS ANY PREPAYMENT OR MULTI-YEAR DISCOUNT TO WHICH ORDERING ACTIVITY IS NO LONGER ENTITLED. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO PREMIER AND PREMIER PLUS SUPPORT SERVICES, CHARGES APPLICABLE TO THE SUPPORT ACCOUNT MANAGER ("SAM") AND ONSITE ENGINEER ("OSE") ARE NON-REFUNDABLE IN THE EVENT THAT SUPPORT SERVICES ARE CANCELLED BY ORDERING ACTIVITY.

3.2 SOFTWARE SPECIFIC SUPPORT TERMS.

- A) UPGRADES.** SUBJECT TO PAYMENT OF THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL USE REASONABLE EFFORTS TO PROVIDE A PATCH FOR ANY MATERIAL DEVIATION BETWEEN THE CURRENT RELEASE OF THE COVERED SOFTWARE AND ITS SPECIFICATIONS WHICH IS REPORTED BY ORDERING ACTIVITY TO BROCADE AND IS REPRODUCIBLE BY BROCADE. ADDITIONALLY, CONTRACTOR, THROUGH BROCADE, MAY PROVIDE ORDERING ACTIVITY WITH MAINTENANCE RELEASES, FEATURE RELEASES AND PLATFORM RELEASES OF THE COVERED SOFTWARE, ON AN "IF AND WHEN AVAILABLE" BASIS, THAT BROCADE GENERALLY MAKES AVAILABLE TO OTHER BROCADE CUSTOMERS AT NO CHARGE BEYOND THE FEES FOR SUPPORT. AS USED HEREIN: (I) "PLATFORM RELEASE" MEANS A PLATFORM, OPERATING SYSTEM OR SOFTWARE ARCHITECTURE CHANGE AND/OR THE ADDITION OF A MAJOR NEW APPLICATION OR FUNCTION; (II) "FEATURE RELEASE" MEANS A MAJOR NEW FEATURE OR AN ENHANCEMENT IN OPERATING PERFORMANCE THAT DOES NOT ALTER THE BASIC FUNCTIONALITY; (III) "MAINTENANCE RELEASE" MEANS A REGULARLY SCHEDULED UPDATE WHICH MAY INCLUDE DEFECT FIXES AND LIMITED PLATFORM-SPECIFIC IMPROVEMENTS; AND (IV) "PATCH" MEANS A TEMPORARY SOLUTION TO A ORDERING ACTIVITY-REPORTED CRITICAL DEFECT (ALL COLLECTIVELY REFERRED TO AS "UPGRADES").
- B) LICENSING TERMS.** ALL UPGRADES ARE SUBJECT TO THE ORIGINAL LICENSE TERMS AND CONDITIONS FOR THE BASELINE SOFTWARE. SUPPORT RELATED TO SUCH BASELINE SOFTWARE AND ALL UPGRADES WILL BE SUBJECT TO THE ADDITIONAL TERMS AND CONDITIONS CONTAINED IN THIS ATTACHMENT A.

- C) SOFTWARE SUPPORT POLICY. CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SOFTWARE SUPPORT FOR THE THEN CURRENT FEATURE RELEASE AND THE GREATER OF (I) THE TWO IMMEDIATELY PRECEDING FEATURE RELEASES, OR (II) ALL FEATURE RELEASES MADE AVAILABLE WITHIN THE PRECEDING 12 MONTHS. AS A GENERAL RULE, UPGRADES MUST BE INSTALLED SEQUENTIALLY THROUGH ALL FEATURE RELEASES AND PLATFORM RELEASES (E.G., TO UPGRADE FROM RELEASE 5.1 TO 6.0, ALL FEATURE RELEASES AND PLATFORM RELEASES AFTER 5.1 WILL BE ADDED AS PART OF THE UPGRADE PROCESS).
- D) CONDITIONS AND LIMITATIONS OF SOFTWARE SUPPORT. SUPPORT SERVICES DOES NOT COVER AND CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR PROBLEMS ARISING OUT OF ORDERING ACTIVITY'S FAILURE TO IMPLEMENT ALL UPGRADES ISSUED HEREUNDER, CHANGES TO THE COMPUTING ENVIRONMENT, ALTERATIONS OR MODIFICATIONS OF THE SOFTWARE PERFORMED BY PARTIES OTHER THAN BROCADE, ACCIDENT, NEGLIGENCE, OR MISUSE OF THE SOFTWARE. ADDITIONAL INFORMATION RELATED TO THE VARIOUS SOFTWARE PRODUCTS, INCLUDING WITHOUT LIMITATION ADDITIONAL SUPPORT SERVICE DESCRIPTIONS, ESCALATION PROCEDURES, PRODUCT DEVELOPMENT GUIDELINES, AND OTHER GENERAL PROCEDURES MAY BE INCLUDED ON THE BROCADE SITE, AS MAY BE AMENDED FROM TIME TO TIME.

3.3 HARDWARE SPECIFIC SUPPORT TERMS.

- A) GENERAL DESCRIPTION. FOR ALL PROBLEMS IDENTIFIED BY BROCADE RELATED TO COVERED HARDWARE AND PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE HARDWARE SUPPORT IN ACCORDANCE WITH THE TERMS HEREIN AND IN ACCORDANCE WITH THE SUPPORT PLANS AT BROCADE'S WEBSITE, WHICH MAY BE UPDATED FROM TIME TO TIME IN BROCADE'S DISCRETION. CONTRACTOR MAY REQUIRE UP TO THIRTY (30) DAYS FROM RECEIPT OF ORDER TO PROVISION THE SPARES AND ONSITE LABOR REQUIRED TO FULFILL THE SUPPORT PLAN SELECTED.
- B) MALFUNCTIONING COVERED HARDWARE. IF ANY COVERED HARDWARE MALFUNCTIONS, CONTRACTOR, THROUGH BROCADE, WILL REPAIR OR REPLACE SUCH COVERED HARDWARE, OR ANY PARTS OF THE COVERED HARDWARE AS PROVIDED IN THE APPLICABLE SUPPORT PLAN. ANY ITEM CONTRACTOR REPLACES WILL BECOME BROCADE'S PROPERTY, AND THE REPLACEMENT ITEM WILL BECOME ORDERING ACTIVITY'S PROPERTY. THE REPLACEMENT ITEMS MAY NOT BE NEW, BUT WILL BE IN GOOD WORKING ORDER AND AT LEAST FUNCTIONALLY EQUIVALENT TO THE ITEM REPLACED. BEFORE CONTRACTOR EXCHANGES ANY HARDWARE, ORDERING ACTIVITY MUST REMOVE ALL FEATURES, PARTS, OPTIONS, ALTERATIONS, ENCUMBRANCES, AND ATTACHMENTS NOT PROVIDED BY BROCADE. ORDERING ACTIVITY ALSO AGREES TO ENSURE THAT THE ITEM IS FREE OF ANY LEGAL OBLIGATIONS, ENCUMBRANCES, OR RESTRICTIONS THAT COULD PREVENT ITS EXCHANGE. BASED ON THE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY, ORDERING ACTIVITY MAY BE RESPONSIBLE FOR ONE-WAY SHIPPING COSTS RELATED TO ANY SUCH RETURNS.
- C) ORDERING ACTIVITY RESPONSIBILITIES. FOR USDX AND EDGE PRODUCTS, ORDERING ACTIVITY IS RESPONSIBLE FOR PROVISIONING REMOTE ACCESS VIA BROCADE-PROVIDED DIAL-IN MODEM TO ENABLE REMOTE DIAGNOSTICS, TROUBLESHOOTING AND SOFTWARE UPGRADES.
- D) EXCLUSIONS. SUPPORT DOES NOT COVER SERVICING OF COVERED HARDWARE DAMAGED BY MISUSE, ACCIDENT, ACT OF GOD, IMPROPER INSTALLATION, MISAPPLICATION, MODIFICATION, UNSUITABLE PHYSICAL OR OPERATING ENVIRONMENT, ABNORMAL PHYSICAL OR ELECTRICAL STRESS, IMPROPER MAINTENANCE (UNLESS BY BROCADE), REMOVAL OR ALTERATION OF SWITCH OR PART IDENTIFICATION LABELS, OR FAILURE CAUSED BY A PRODUCT FOR WHICH CONTRACTOR IS NOT RESPONSIBLE. CONTRACTOR MAY CHARGE ORDERING ACTIVITY SEPARATELY FOR ANY SERVICES PROVIDED BY BROCADE RELATED TO SUCH DAMAGED HARDWARE.

4. HARDWARE SPECIFIC TERMS.

- 4.1 RMA PROCEDURE. ORDERING ACTIVITY SHALL NOT RETURN ANY PRODUCT, WHICH ORDERING ACTIVITY DETERMINES TO BE DEFECTIVE, WITHOUT A RETURN MATERIAL AUTHORIZATION NUMBER ("RMA") ISSUED BY BROCADE. FOR EVERY PRODUCT RETURNED BY ORDERING ACTIVITY SUBJECT TO THIS AGREEMENT: (A) ORDERING ACTIVITY MUST PROVIDE CONTRACTOR WITH THE SERIAL NUMBER OF THE PRODUCT; (B) CONTRACTOR, THROUGH BROCADE, SHALL VERIFY WHETHER OR NOT PRODUCT IS WITHIN THE APPLICABLE WARRANTY PERIOD OR ORDERING ACTIVITY IS OTHERWISE ENTITLED TO REPAIR OR REPLACEMENT OF PRODUCT WITHOUT CHARGE; (C) (I) IF ORDERING ACTIVITY IS ENTITLED TO RETURN PRODUCT FOR REPAIR/REPLACEMENT WITHOUT CHARGE, THEN BROCADE SHALL ISSUE TO ORDERING ACTIVITY AN RMA; AND (II) IF PRODUCT IS NOT UNDER WARRANTY, THEN ORDERING ACTIVITY MUST ISSUE A PURCHASE ORDER FOR SERVICE TO CONTRACTOR, THROUGH BROCADE, UPON RECEIPT OF WHICH BROCADE WILL ISSUE AN RMA TO ORDERING ACTIVITY; (D) ORDERING ACTIVITY SHALL SHIP THE PRODUCT TOGETHER WITH THE RMA INFORMATION TO THE ADDRESS PROVIDED BY BROCADE; AND (E) CONTRACTOR, THROUGH BROCADE, SHALL REPAIR OR REPLACE PRODUCT. ORDERING ACTIVITY SHALL PAY FREIGHT COSTS FOR RETURN SHIPMENT BY BROCADE TO ORDERING ACTIVITY OF ANY PRODUCT CLAIMED BY ORDERING ACTIVITY TO BE DEFECTIVE BUT DETERMINED BY CONTRACTOR, THROUGH BROCADE, TO NOT BE DEFECTIVE. THE REPAIR LEAD TIME IS THIRTY (30) DAYS FROM RECEIPT OF THE RETURNED PRODUCT AT BROCADE'S REPAIR FACILITY.

5. WARRANTIES AND DISCLAIMERS.

5.1 SOFTWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF SHIPMENT TO ORDERING ACTIVITY THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED SPECIFICATION THEREFORE. AS CONTRACTOR'S LIABILITY AND ORDERING ACTIVITY'S REMEDY FOR A BREACH OF THIS WARRANTY, CONTRACTOR SHALL USE ITS COMMERCIALY REASONABLE EFFORTS, IN CONTRACTOR'S SOLE DISCRETION, TO REPAIR AND/OR REPLACE SUCH NON-CONFORMING SOFTWARE OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT. CONTRACTOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY RELATED TO ANY SECURITY SOFTWARE. ORDERING ACTIVITY ACKNOWLEDGES THAT SECURITY SOFTWARE DOES NOT GUARANTEE THE SECURITY OF ORDERING ACTIVITY'S NETWORK, AND THAT ORDERING ACTIVITY IS RESPONSIBLE FOR ALL OTHER ASPECTS OF SECURITY, INCLUDING WITHOUT LIMITATION, CORRECT INSTALLATION AND SETUP OF THE SECURITY FEATURES OF THE SOFTWARE AND ALL RELATED REQUIREMENTS, CORRECTLY CONFIGURED SECURITY POLICIES, SELECTION OF HARDWARE AND SOFTWARE (INCLUDING NETWORK SECURITY TOOLS), CORRECT INSTALLATION, CONFIGURATION, AND MAINTENANCE OF THE HARDWARE AND SOFTWARE, THE INTEROPERABILITY OF THE VARIOUS COMPONENTS OF ORDERING ACTIVITY'S NETWORK, AND A PHYSICALLY AND ELECTRONICALLY SECURE OPERATING ENVIRONMENT.

5.2 HARDWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY, FOR THE WARRANTY PERIOD SET FORTH IN CONTRACTOR'S QUOTATION FOR THE APPLICABLE HARDWARE THAT EACH UNIT OF HARDWARE SHALL BE FREE OF DEFECTS IN ANY MATERIAL RESPECT IN MATERIALS AND WORKMANSHIP AND SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH HARDWARE. THIS WARRANTY DOES NOT APPLY TO THOSE UNITS OF HARDWARE WHICH: (I) HAVE BEEN SERVICED OR ALTERED, EXCEPT AS EXPRESSLY AUTHORIZED BY CONTRACTOR; (II) HAVE NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH ANY INSTALLATION, HANDLING, MAINTENANCE OR OPERATION INSTRUCTIONS SUPPLIED BY CONTRACTOR; (III) HAVE BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE OR ACCIDENT; (IV) HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE OR TRANSPORTING; OR (V) INTEROPERATE WITH THIRD PARTY PRODUCTS, SUCH AS OPTICAL TRANSCEIVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY CONTRACTOR. CONTRACTOR'S SOLE OBLIGATION AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY FOR FAILURE OF THE HARDWARE(S) TO CONFORM TO THE WARRANTY SET FORTH IN THIS SECTION SHALL BE, AT CONTRACTOR'S EXPENSE, TO REPAIR/REPLACE SUCH DEFECTIVE HARDWARE WITHIN THE NORMAL MANUFACTURING LEAD TIMES APPLICABLE TO SUCH HARDWARE AND TO RETURN SUCH REPAIRED HARDWARE TO ORDERING ACTIVITY OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT.

5.3 NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS, AND SUPPORT ARE DELIVERED "AS IS" AND NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, ANY RELATED DOCUMENTATION OR SERVICES.

6. PROPRIETARY RIGHTS. BROCADE OWNS AND RETAINS FOR ITSELF ALL RIGHT, TITLE AND INTEREST IN AND TO ALL DESIGNS, ENGINEERING DETAILS, AND OTHER DATA AND MATERIALS PERTAINING TO THE PRODUCTS OR, SUPPORT SUPPLIED BY CONTRACTOR AND TO ALL DISCOVERIES, INVENTIONS, PATENTS AND OTHER PROPRIETARY RIGHTS ARISING OUT OF THE WORK DONE BY CONTRACTOR, THROUGH BROCADE, IN CONNECTION WITH THE PRODUCTS AND SUPPORT OR WITH ANY AND ALL PRODUCTS DEVELOPED BY BROCADE AS A RESULT THEREOF, INCLUDING THE SOLE RIGHT TO MANUFACTURE ANY AND ALL SUCH PRODUCTS. ORDERING ACTIVITY WARRANTS THAT IT WILL NOT DIVULGE, DISCLOSE, OR IN ANY WAY DISTRIBUTE OR MAKE USE OF SUCH BROCADE PRODUCTS OR RELATED INFORMATION, AND THAT IT WILL NOT MANUFACTURE OR ENGAGE TO HAVE MANUFACTURED SUCH PRODUCTS.

6.1 NO IMPLIED LICENSES. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS CONFERRING ANY RIGHTS BY IMPLICATION, OR OTHERWISE, UNDER ANY INTELLECTUAL PROPERTY RIGHT, OTHER THAN THE RIGHTS EXPRESSLY GRANTED IN THIS AGREEMENT.

Brocade Professional Services Terms and Conditions

1. **Working Hours.** Except for any Professional Services with explicitly stated extended work hours, all Professional Services shall be performed during normal business hours. Ordering Activity (herein also referred to as "Customer") shall inform Contractor through Brocade in advance if any off-shift services will be required.

2. **Facilities.** Professional Services may be performed on Customer's site. Customer agrees to provide the facilities reasonably necessary for Brocade to perform the Professional Services, including a safe and suitable workspace for the Brocade employees or contractors performing the Professional Services, as well as appropriate access to Product and third party hardware, software and/or services. For security and safety reasons, a Customer representative shall be available on-site whenever Brocade employees or contractors are performing the Professional Services at such facilities.

3. Prerequisites. Prior to the commencement of the Professional Services, Customer agrees to take all prerequisite steps identified by Contractor through Brocade, including without limitation, (i) ensuring that all manufacturers' labels (such as serial numbers) are in place, accessible, and legible, (ii) obtaining authorization to have Brocade service a Product that Customer does not own, (iii) licensing, purchasing and/or paying licensing fees and installing the required software and obtaining a license or appropriate permission for Brocade to access and use such software, and (iv) testing all hardware and software necessary to perform the Professional Services, and all such hardware and software documentation shall be made available to Brocade, and (v) any other prerequisites identified by Brocade. Customer acknowledges that any failure to perform the prerequisites may result in voiding the warranty, a delay in performance or additional costs for the particular service. IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE THAT CUSTOMER HAS COMPLETE BACKUPS OF ALL DATA PRIOR TO COMMENCEMENT OF ANY SERVICES. CONTRACTOR OR BROCADE ASSUMES NO RESPONSIBILITY FOR LOST DATA. Contractor or Brocade will not be responsible for Customer's failure to obtain such permissions and licenses.
4. Scheduling Professional Services. Promptly following receipt of Customer's order, Contractor through Brocade shall contact Customer's representative to schedule the Professional Services. All Professional Services must be scheduled to begin within one hundred eighty (180) days of the date of the order.
5. Cancellation. Unless otherwise quoted by Contractor, Customer may cancel the Professional Services at any time on thirty (30) days prior written notice to Contractor through Brocade. In such event, Customer shall pay Contractor for all Professional Services performed through the date of termination and reimburse Contractor for all expenses incurred and billable pursuant to the Customer's order. Contractor will credit or refund any prepaid fees applicable to cancelled Professional Services not performed on the date of termination, less any volume or other discount taken to which Customer is no longer entitled.
6. Rights in the Software Deliverables. The following terms shall apply for any Software deliverables provided by Contractor through Brocade as part of the Professional Services. Subject to the terms and conditions of this Attachment A and payment of the applicable license fees, Brocade and its third party licensor, if applicable, grant to Customer a non-exclusive, non-transferable license to use the applicable Software deliverables in object code form solely for internal purposes and solely the purposes set forth in the relevant Brocade product documentation. Customer shall have no right to sublicense such Software deliverables or any rights related thereto.
7. Acceptance Procedures. Upon completion of the Professional Services, Customer shall have ten (10) days (or such other time period specified in the quotation) following the date of delivery to evaluate such Professional Services. On or before the tenth (10th) day following such delivery, Customer shall provide Contractor with either (i) a written acceptance of the Professional Services; or (ii) written notice of rejection describing in detail the deficiency that is the basis for the rejection. A deficiency is a material non-conformity of the Professional Services to the acceptance criteria stated in the applicable Contractor's quotation or in the absence of such criteria, a material non-conformity to the description of the Professional Services set forth in the quotation. In the event that Customer rejects the Professional Services in accordance with the afore-described procedure, Contractor will use diligent efforts to correct the deficiency promptly. The Professional Services and any associated deliverables that are re-performed or redelivered shall be subject to Customer's acceptance in accordance with this provision. In the event Customer fails to accept or reject the Professional Services within 10 days after Contractor's completion of the applicable Professional Services, or accept or reject re-performed Professional Services within 10 days after Contractor's completion of the applicable Professional Services, the Professional Services shall be deemed accepted by Customer, and Customer shall have no further right to reject the Professional Services.
8. Right to Instruct. Brocade consultants deployed to perform any services for Customer under this Attachment A are under the exclusive supervision and instruction of Brocade. Brocade reserves the exclusive right to instruct its consultants, in particular with respect to work hours and the scope and manner of services to be performed under this Attachment A. Customer has no rights to instruct Brocade's consultants whatsoever.
9. Professional Services Warranty. Contractor warrants for a period of thirty (30) days: (i) following the completion of the Professional Services, in the case where no acceptance procedure is applicable, and (ii) following acceptance of the Professional Services, otherwise, that all Professional Services will be performed in a professional and workman-like manner by appropriately trained personnel, using generally accepted industry standards and practices. As Contractor's liability and Customer's remedy for a breach of this warranty, if the Professional Services are not provided as warranted, Contractor will, at its sole discretion, either: (i) correct any material non-conformances in the Professional Services deliverables; (ii) re-perform the Professional Services; or (iii) credit Customer for the amount paid for the nonconforming Professional Services. This warranty does not apply to the extent any non-conformity relates to (i) any specifications, code, diagnostic or other tools, or any other materials provided by Customer; (ii) the integration, operation, modification, or use of the Professional Services or any deliverables in any manner not authorized by Contractor, and (iii) any changes to the network environment after the services were rendered. EXCEPT AS EXPRESSLY SET FORTH IN THIS ATTACHMENT A, THE PROFESSIONAL SERVICES ARE DELIVERED "AS IS" AND NEITHER CONTRACTOR NOR ITS THIRD PARTY SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
10. Proprietary Rights. Brocade owns and retains for itself all right, title and interest in and to all designs, engineering details, and other data and materials pertaining to the Professional Services supplied by Brocade and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Brocade in connection with the Professional Services or with any and all products developed by Brocade as a result thereof, including the sole right to manufacture any and all such Products; however, Customer shall have perpetual unlimited rights to all designs, engineering details and other data and materials pertaining to the

Professional Services. Customer warrants that it will not divulge, disclose, or in any way distribute or make use of such Brocade Professional Services or related information, and that it will not manufacture or engage to have manufactured such Products.

11. Security and Conduct. Customer shall maintain industry standard security policies, practices and procedures, and shall comply with all applicable laws and regulations and with all applicable health, safety and security rules, programs and procedures. Contractor and Brocade shall comply with all such Customer security policies, practices and procedures to the extent applicable and to the extent Brocade is made aware of such policies, practices and procedures.

12. Background Checks and Drug Free Workplace. Contractor through Brocade has certain procedures in place to perform background checks and to ensure a drug free workplace for its employees and contractors performing Professional Services. Upon request, Brocade will provide information related to such procedures. Customer acknowledges that certain jurisdictions do not allow or limit such checks, and Brocade will not perform such checks in these jurisdictions or for employees from these jurisdictions.

Catbird Networks, Inc.
1800 Green Hills Road, Suite 113
Scotts Valley, CA 95066

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

CATBIRD NETWORKS, INC.

CATBIRD NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

ARTICLE 1: DEFINITIONS

"Catbird" means Catbird Networks Inc., 1800 Green Hills Road Suite 113, Scotts Valley, CA 95066.

"Catbird Control Center" is a web-based management console for managing one or more Catbird Virtual Machine Appliances (as defined below).

"Catbird Virtual Machine Appliance" is software that provides security by connecting to physical or virtual network switches.

"Catbird Virtual Security Professional" or "CVSP" is a suite of training materials comprising curricula and software.

"Catbird vSecurity® Application" comprises two components: the Catbird Virtual Machine Appliance and the Catbird Control Center. The Catbird Virtual Machine Appliance operates in existing virtual infrastructures or as a standalone virtual machine using a virtual machine player technology. The Catbird Control Center provides management, data correlation, data analysis, logging and integration with other vendor products.

"Seat" means a named individual user of CVSP.

"Socket" means a CPU slot on a printed circuit board (PCB) that is designed to house a CPU (also called a microprocessor). CPU sockets are found on the motherboard of server computers.

"Software" means the Catbird vSecurity® Application and CVSP, including (a) all of the contents of the files, download packages delivered to Ordering Activity or hosted by Catbird or its distributors, resellers, OEM/MSP partners, or other business partners (collectively "Authorized Partner(s)") and accessed by Ordering Activity, including but not limited to (i) Catbird or third party computer information or software; (ii) related explanatory materials in printed, electronic, or online form, including information on the term of Ordering Activity license ("Documentation"); and (b) upgrades, modified or subsequent versions and updates of the Software, if any, licensed to Ordering Activity by Catbird or an authorized partner as part of a maintenance contract or service subscription.

"Use" or "Using" means to access, install, download, copy or otherwise benefit from the Software.

ARTICLE 2: LICENSE GRANTS

Section 2.1 Catbird Control Center License. Contractor hereby grants Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time, a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and use Catbird Control Center on Ordering Activity computer(s), for the sole purpose of managing Catbird Virtual Machine Appliances. Ordering Activity license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.2 Catbird Virtual Machine Appliance License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install, and Use the Catbird Virtual Machine Appliance software on Ordering Activity computer(s), for the sole purpose of implementing network security controls and virtual infrastructure monitoring within Ordering Activity network. Ordering Activity license is for the number of Sockets set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.3 CVSP License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and Use CVSP for the sole purpose of Using the Catbird vSecurity® Application. Ordering Activity's license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.4 Feedback License. Ordering Activity hereby grant to Catbird through Contractor a royalty-free, worldwide, irrevocable, perpetual license to make any and all use of any and all suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity or on Ordering Activity's behalf relating to the Software, any portion thereof, or any Documentation and training materials associated therewith.

ARTICLE 3: USE OF THE SOFTWARE

Section 3.1 No Third-Party Grants. Ordering Activity will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Software or any portion thereof.

Section 3.2 No Improper Use. Ordering Activity will not (i) permit any third party to access the Software or make the Software available for access by any third party unless expressly agreed to in writing by Catbird, (ii) copy, frame or mirror any part or content of the Software, (iii) access the Software in order to build a competitive product or service, (iv) copy any features, functions or graphics of the Software, (v) Use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (vi) Use the Software to store or transmit malicious code or software, (vii) interfere with or disrupt the integrity or performance of the Software or third-party data contained therein, (viii) attempt to gain unauthorized access to the Software or its related systems or networks, or (ix) Use the Software, alone or in combination with other components, to infringe the intellectual property rights of any third party.

Section 3.3 No Reverse Engineering. Ordering Activity will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Software or any portion thereof. Any source code, ideas, know-how, techniques, algorithms, procedures, and any other concepts derived from any act performed in violation of this Section 3.3 shall constitute intellectual property of Catbird to which Catbird shall retain all exclusive right, title, and interest, and to which the terms of Section 4.1 shall apply.

Section 3.4 No Unlawful Use. Ordering Activity will Use the Software solely for lawful purposes. In this respect, Ordering Activity may not, without limitation (a) intercept or monitor any equipment that is not Ordering Activity's; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Software; (c) Use the Software to cause or intend to cause embarrassment or distress to, or to threaten, harass any third party.

Section 3.5 Consent. If Ordering Activity Use of the Software is dependent upon the use of a processor and bandwidth owned or controlled by a third party, Ordering Activity acknowledge and agree that Ordering Activity license to Use the Software is subject to Ordering Activity obtaining consent from the relevant third party for such use. Ordering Activity represent and warrant that by accepting this Agreement and using the Software, Ordering Activity have obtained such consent.

ARTICLE 4: EXCLUSIVE OWNERSHIP

Section 4.1 Owned by Catbird. As between Ordering Activity and Catbird, Catbird shall own all right, title, and interest in and to the Software and any associated Documentation and training materials, including all related intellectual property rights ("IP Rights"). Nothing in this Agreement shall be construed to transfer any such IP Rights to, or to vest any such IP Rights in, Ordering Activity. Ordering Activity will not take any action to jeopardize, limit or interfere with Catbird's IP Rights. Any unauthorized use of Catbird's IP Rights is a material breach of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. For the avoidance of doubt, Ordering Activity possession, installation, or Use of the Software does not transfer to Ordering Activity any title to the intellectual property in the Software, and Ordering Activity will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

Section 4.2 No Removal of Notices. Ordering Activity will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or Catbird's rights in the Software or any associated documentation and Training Materials and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

ARTICLE 5: UPGRADES AND UPDATES

Section 5.1 Upgrades. Contractor, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Software. Contractor has no obligation to make available to Ordering Activity any subsequent versions of the Software.

Section 5.2 Updates. Contractor, in its sole discretion, reserves the right to updates security information to the Catbird vSecurity® Application. Contractor has no obligation to make available to Ordering Activity any subsequent updates to the security information contained within the Catbird vSecurity® Application.

ARTICLE 6: RESERVED

ARTICLE 7: INDEMNIFICATION, WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY

Section 7.1 Reserved.

Section 7.2 Warranty Disclaimer. CONTRACTOR MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR

ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, CONTRACTOR, ITS SUPPLIERS, AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, OR INTEGRATION. WITHOUT LIMITING THE FOREGOING PROVISIONS, CONTRACTOR MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

Section 7.3 Reserved.

ARTICLE 8: TERMINATION

Section 8.1 Reserved.

Section 8.2 Reserved.

Section 8.3 Consequences of Termination. Upon termination of this Agreement:

(a) all licenses and rights to Use the Software shall immediately terminate; (b) Ordering Activity will immediately cease any and all Use of the Software; and (c) Ordering Activity will immediately remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in Ordering Activity's possession or under Ordering Activity's control.

ARTICLE 9: MISCELLANEOUS

Section 9.1 Export Controls. Ordering Activity are advised that the Software is of United States origin and subject to the United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Ordering Activity agree not to directly or indirectly export, import, download or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Additionally, Ordering Activity agree not to directly or indirectly export, import or transmit the Software contrary to the laws or regulations of the United States.

Section 9.2 Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Schedule Contract and shall be prohibited except to the extent expressly permitted by the terms of this Schedule Contract.

Section 9.3 Reserved.

Section 9.4 Reserved.

Section 9.5 No Waiver. No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

Section 9.6 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision that most nearly reflects the Parties' intent in entering into this Agreement.

Section 9.7 Catbird Customer Contact. If Ordering Activity have any questions concerning this Agreement, or if Ordering Activity would like to contact Catbird for any other reason, please call (831) 440-8149, fax (831) 461-1611, or write: Catbird Networks, Inc., Attention: Customer Service, 1800 Green Hills Road, Suite 113, Scotts Valley, California 95066

Centrify Corporation
785 N. Mary Avenue, Suite 200
Sunnyvale, CA 94085

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CENTRIFY CORPORATION

CENTRIFY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

GRANT. Contractor hereby grants to Ordering Activity (herein also referred to as "You" or "Your") as licensee, a personal, nonexclusive, nontransferable license, without right of sublicense, to install, use and execute, Centrif DirectControl, together with any updates and modifications to the foregoing, if any, provided to you by Contractor (collectively "Software"). The Software is licensed solely in machine readable object code format. You may install, use and execute the component(s) of the Software on that number and type of applications and computers for which you have paid Contractor a GSA license fee. The manner of calculating the type and number of applications and computers shall be determined by the operation and configuration of the Software, the terms of the Documentation, and/or Centrif's standard practices, unless otherwise agreed in a fully executed agreement between you and Contractor. Contractor further grants you a personal, nonexclusive, nontransferable license to install, use, execute and modify the Group Policies supplied, in their source code form, as part of the Software, solely for the purpose of modifying the Group Policies and Reports to meet your specific needs ("Modified Group Policies and Reports"). Except as provided herein, the Modified Group Policies and Reports shall be deemed to be Software hereunder.

RESTRICTIONS. The rights granted herein are subject to the following restrictions: (i) you may not copy (except for back-up purposes), modify, port, adapt, translate, localize, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent that it is expressly permitted by the law in effect in the jurisdiction in which you are located notwithstanding this limitation; (ii) you may not create derivative works based on the Software; (iii) you may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or Documentation; (iv) you may not transfer, lease, assign, sublicense, pledge, rent, share or distribute the Software or make it available for timesharing, service bureau or on-line use, unless previously agreed to in writing by Contractor; and (v) you may not disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Contractor.

SOFTWARE. If you receive your first copy of the Software electronically, and a second copy on physical media, the second copy may be used for archival purposes only. This Attachment A does not grant you any right to receive, or any license to, any enhancement or update of the Software, or any other Centrif software.

TITLE. The Software and Documentation are confidential and proprietary information of Contractor and/or its suppliers. Title, ownership rights, and intellectual property rights in and to the foregoing shall remain with Contractor and/or its suppliers. The Software and Documentation are protected by the copyright laws of the United States and international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content. This license does not convey to you an interest in or to the Software, but only grants you a limited right of use, which may be revocable in accordance with the terms of this Attachment A.

MAINTENANCE AND TECHNICAL SUPPORT. Subject to your payment of applicable GSA fees, Contractor through Centrif will provide maintenance and support services in accordance with Centrif's standard support policies. You understand that Centrif may update the software at any time. Such updates may be provided to you in due course, but Centrif has no obligations to provide such updates to you. You may decide whether to install updates to the Software unless Contractor, through Centrif expressly notifies you that a particular update is mandatory.

DISCLAIMER OF WARRANTIES. THE SOFTWARE IS PROVIDED TO YOU AS IS AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY CONTRACTOR OR ITS SUPPLIERS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, INCLUDING WARRANTIES OR CONDITIONS OF TITLE, QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATIONS OF THE SOFTWARE WILL BE UNINTERRUPTED. CONTRACTOR AND ITS SUPPLIERS DO NOT

WARRANT THE ACCURACY OF THE REPORTS GENERATED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS ATTACHMENT A AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

U.S. GOVERNMENT RESTRICTED RIGHTS. If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in Software and Documentation, including its rights to use, modify, reproduce, release, perform, display or disclose the Software or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Attachment A.

EXHIBIT A – CENTRIFY SUPPORT PACKAGES

Support Packages

Contractor through Centrify offers two customer support packages, Standard and Premium, to provide the right level of support to fit your organization's specific needs.

Standard Support

- Support by phone and email.
- Access to Centrify's secure Online Customer Support Portal, which includes Knowledge Base articles, case submission and tracking, and product and documentation downloads
- Two designated support contacts.
- An escalation process to ensure your issues are addressed in a timely manner.

Online product updates and patch downloads.

Premium Support

- All Standard Support features, plus ...
- 24 x 7 x 365 support.
- Two additional designated support contacts (for a total of four).
- Eligible for extended version and platform support.

After hours Incident Support

- Pre-purchased Premium incidents for Standard Support customers
- Expires 90 days from purchase.

How to Contact Support

Contractor through Centrify Support is accessible through multiple channels.

Online

Centrify's secure Online Customer Support Portal provides 24-hour access to Knowledge Base articles, case submission and tracking, and product and documentation downloads. Visit: www.centrify.com/support

Phone & Email

North America (and all other areas excluding EMEA)

Phone: +1 408 542 7500

Monday – Friday 9 a.m. to 6 p.m. in your North America time zone (GMT -5 to GMT -8)

Email: support.us@centrify.com

Response times vary based on your support package and the priority level of the issue.

Europe, Middle East and Africa (EMEA)

Phone: +44 118 965 7887

Monday – Friday 9:00 to 18:00 Central European Time (GMT +1)

9:00 to 18:00 UK (GMT)

Email: support.emea@centrify.com

Response times vary based on your support package and the priority level of the issue.

Priority Levels & Response Times

The Centrify Support team understands that you require a timely response to your requests. The following table shows the different issue priority levels, their descriptions, and the guaranteed response time. With Premium Support, you may report a critical issue at any time, night or day, and expect a Technical Support Engineer to begin working on your case based on the priority level of the case.

Priority Level	Standard	Premium
Level 1 Production System Down	4 Business Hours	2 Business Hours
Level 2 Development System Down	6 Business Hours	4 Business Hours
Level 3 Serious Software Problem	8 Business Hours	4 Business Hours
Level 4 General Usage Problem	24 Business Hours	24 Business Hours
Level 5 Feature Request	24 Business Hours	24 Business Hours

Note: These are standard case response times and not case resolution times. A response means that we will contact you to 1) acknowledge receiving your issue report and 2) get any additional information that we will need in order to assist you.

Escalation Procedures

Every issue report is tracked from the time you contact us until we jointly agreed that the issue has been resolved. Based on the priority of an issue, Contractor through Centrifry Support escalates customer cases through our organization to ensure your business-critical issues receive a quick resolution.

In general, if you are not satisfied with the responsiveness of our Support staff, the issue can be escalated to your Regional Sales Representative. If you are still not satisfied, the issue can be further escalated to the Vice President of Support.

Product Updates

Purchasing either Standard or Premium Support entitles you to product updates at no additional charge during the term and type of the maintenance contract for all Centrifry products licensed and covered by maintenance.

You can obtain the latest versions of Centrifry software through our Online Customer Support Portal: www.centrifry.com/support

Check Point Software Technologies, Inc.
800 Bridge Parkway
Redwood City, CA 94065

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CHECK POINT SOFTWARE

CHECK POINT SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS:

“Licensed Configuration” means to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of users, devices or nodes (an internal computing device with an IP address) on the trusted side of the network or that is trying to traverse the firewall, and the numbers of cores, or the maximum throughput capacity stated, or the code generated from the master installation, or any other hardware or software specifications, as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. If the Product purchased by You does not come with a License Key then the Licensed Configuration shall be the minimum configuration allowed for the Product by Check Point upon which the licensing fee was based.

“Licensed-server” means the server or appliance (defined by the host ID identified by You to Contractor through Check Point when obtaining the License Key) which enables the Product to operate in accordance with the Licensed Configuration. **“License Key”** means the code provided to You by Contractor through Check Point, which enables the Product to operate on the Licensed-server or appliance for the specified Licensed Configuration.

“Product” means the object code copy of the software program, including Third Party Software, provided to You, together with the associated original electronic media and/or associated hardware devices (“Hardware Products”) and all accompanying manuals and other documentation, if available, and together with all enhancements, upgrades, and extensions thereto that may be provided by Contractor through Check Point to You from time to time.

“Standard User” means You indicated in Your purchase order or in requesting the License Key that You intend to use the Products on Your own behalf, or You obtained the products from a Managed Service Provider, reseller, vendor or any other intermediate supplier.

“Third Party Software” means any software programs provided by third parties contained in the Product.

“Third Party Software Provider” means the third party that has the right to provide and grant licenses for the use of Third Party Software.

“You” or “Your” means Ordering Activity.

2. LICENSE AND RESTRICTIONS:

License. Contractor hereby grants only to You, a non-exclusive, non-sublicensable, non-transferable perpetual license (with the exception of (i) the license shall not be perpetual if the Product is designated for a limited time period only, in which case the license shall terminate at the expiration of the applicable period; and (ii) with regards to any Hardware Product, the license shall be valid only as part of and for the life of the originally designated Hardware Product) to install and use the copy of the Product in accordance with the relevant end user documentation provided by Contractor only on the Licensed-server and only for the Licensed Configuration. You have no right to receive, use or examine any source code or design documentation relating to the Product.

Standard User Restrictions. If You are a Standard User, the Products are licensed to You solely for use by You to provide policy management for Your own operations. To the extent applicable, You may reproduce the downloaded or installed Product for the purpose of connecting only with a duly licensed Check Point product, in accordance with the functionality, as described in the accompanying documentation for which You have paid the applicable fees to Contractor, and only within the designated limits of Your Product license for which You have purchased and provided to users, according to the restricted, maximum, authorized number of users, computer instances (means a computing unit individuated by an instance of an operation system), or copies of the Product (as the case may be) that can be used and installed at any given time. No Product, nor any portion thereof, may be used by or on behalf of, accessed by, re-sold to, rented to, or distributed to any other party.

General Restrictions. Except for copies solely for back-up or disaster recovery purposes or as may be permitted by applicable law, You may not copy the Product, in whole or in part. You must reproduce and include the copyright notice and any other notices that appear on the original Product on any back up copy. You agree not to allow others to use the Product and You will not use the Product for the benefit of third parties. You acknowledge that the source code of the Product, and the underlying ideas or concepts, are valuable intellectual property of Check Point and You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Products by any means whatsoever. You will not develop methods to enable unauthorized parties to use the Product, or to develop any other product containing any of the concepts and ideas contained in the Product not independently developed by You. You will not (and will not direct any third party to) modify Product or incorporate any portion of Product into any other software or create a derivative work of any portion of the Product. You will not (and will not direct any third party to) remove any copyright or other proprietary notices from the Product. Your use of the Product may require the purchase of separate licenses to use particular features, functionalities, operations, or capabilities.

Specific Restrictions. The Product is licensed to You based on the applicable Licensed Configuration purchased, as set forth in the Licensed Configuration definition in Section 1. The License permits the use of the Product only in accordance with the Product specifications as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. It is a violation to create, set-up or design any hardware, software or system which alters the number of readable IP addresses, users, number of cores or exceeds the maximum throughput capacity presented to the Product with the intent, or resulting effect, of circumventing the Licensed Configuration.

Disabled License-server. The License Key You obtain from Contractor through Check Point enables the Licensed-server which enables You to use the Licensed Configuration of the Product. If your Licensed-server is disabled for any reason, Check Point may, at its sole discretion, issue You another License Key which will enable You to operate this Product on a substitute Licensed-server. In this event, You agree not to use the Product on the original Licensed-server nor its License Key.

Customization for Product with VPN Functionality. For a Product with VPN functionality, customization is permitted to allow the inclusion of a bitmap on the left side of the authentication challenge/response dialog, and the insertion of text in the authentication success and authentication failure dialog boxes; provided, however, that the Product is used to communicate with a Check Point VPN-1 gateway licensed to the entity using the Product and the customization may not contain any reference to a competitive gateway or to Check Point products or services without Contractor's prior written approval.

Check Point Data Loss Prevention ("DLP") Blade, DLP-1 Product Family and Document Security Product Family. If you are using any of these products, in many countries you may be required to advise users that their data, actions taken on the data, and web traffic may be inspected. Please consult the Check Point user guide and local laws as applicable.

Third Party Violation. In purchasing a Product, You are acknowledging that Contractor through Check Point may need to make a determination for You on the potential effect the identified programs may have on Your system. You agree that the Product may automatically delete and/or restrict access to certain programs and/or provide to You the customized ability to delete and/or restrict access to certain programs. The deletion and/or restriction of access to any of these programs may be in violation with other license agreements that You have knowingly or unknowingly agreed to. The deletion and/or restriction of these programs and the potential violation of a third party license is Your responsibility. Check Point has no ability to verify what, if any, third party agreements You may have agreed to.

Inspecting Encrypted Traffic. Certain Check Point products and/or features may enable the inspection of encrypted traffic. The ability to define the inspection rules is provided to You and You may define it based on your organizational needs. However, it shall be your sole responsibility to comply with all applicable laws and regulations in defining Your inspection rules and privacy regulations. You understand that this feature enables decrypting the traffic at the gateway in order to inspect it, after which it is re-encrypted before it is sent to the server.

3. TITLE AND INTELLECTUAL PROPERTY:

All right, title, and interest in and to the Product shall remain with Check Point and its licensors. The Product is protected under international copyright, trademark and trade secret and patent laws. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

4. LIMITED WARRANTY, WARRANTY DISCLAIMERS:

Limited Software Warranty. Contractor warrants to You that the encoding of the software program on the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its user manual, as it exists at the date of delivery, for a period of ninety (90) days. Contractor's liability and Your remedy under this warranty shall be, at Contractor's option, either: (i) return of the price paid to Contractor for the Product, resulting in the termination of the purchase order, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONTRACTOR DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. CONTRACTOR DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to You. This warranty gives You specific legal rights.

5. PRE-RELEASE VERSIONS:

License Grant. With respect to any pre-release version of a Check Point product, including a Beta or an Early Availability product (all collectively referred to herein as a "Beta Product") that may be provided to You by Contractor through Check Point from time to time, at its sole discretion, Contractor grants You a non-transferable and non-exclusive license to use the Beta Product for evaluation purposes only. The license is designed to provide You with early operational experience with the Beta Product and to provide Check Point with specified information regarding Your experiences with the installation and operation of the Beta Product. The license shall be in effect for a limited period as determined by Check Point and certain other restrictions may apply. You may be asked to sign a separate agreement pertaining to the Beta Product.

No Obligations. Contractor has no obligation to provide support, maintenance, upgrades, modifications, or new releases for a Beta Product. Owing to the experimental nature of the Beta Product, You are advised not to rely exclusively on the Beta Product for any reason. YOU AGREE THAT THE BETA PRODUCT AND RELATED DOCUMENTATION ARE BEING DELIVERED "AS IS" WITHOUT WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR DAMAGES, DIRECT OR INDIRECT, OF ANY NATURE OR EXPENSES INCURRED BY YOU IN CONNECTION WITH THE BETA TESTING. YOUR REMEDY SHALL BE TO TERMINATE THE BETA TEST AND THIS LICENSE BY WRITTEN NOTICE TO CONTRACTOR.

EXHIBIT A – CHECK POINT HARDWARE WARRANTY:

1. LIMITED HARDWARE WARRANTY:

Contractor warrants that the hardware components of its Hardware Product shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, in accordance with the documentation provided, for a period of one (1) year from the date of activation of the Hardware Product. If the Hardware Product has not been activated, the warranty will be valid for fifteen (15) months from the date of Contractor's shipment of the Hardware Product ("Warranty Period").

After the Warranty Period, certain return material authorization ("RMA") services, as provided by Contractor through Check Point (which are not covered under this warranty), are available for all Hardware Products pursuant to a purchased and active Check Point support agreement.

Ordering Activity's (herein also referred to as "You" or "Your") remedy, and Contractor's liability for defective hardware components, shall be that Contractor through Check Point, upon confirmation of a defect or failure of a hardware component to perform as warranted, shall at its sole option, either repair or replace the nonconforming hardware component or return of the price paid for the Hardware Product. All replacement parts furnished to you under this warranty shall be refurbished and equivalent to new, and shall be warranted as new for the remainder of the original warranty period. If a hardware failure occurs in the first 30 days from the product's software activation, Contractor through Check Point will replace it with new part or full unit as may be needed. All defective parts, which have been replaced, shall become the property of Check Point. All defective parts that have been repaired shall remain Your property. This warranty gives You specific legal rights.

2. EXCLUSIONS:

The foregoing warranties and remedies shall be void as to any Hardware Products damaged or rendered unserviceable by one or more of the following: (1) improper or inadequate maintenance by anyone other than Contractor or Contractor's authorized agents, (2) software or interfacing supplied by anyone other than Contractor, (3) modifications, alterations or additions to the Hardware Products by personnel not certified by Contractor or Contractor's authorized agents to perform such acts, or other unauthorized repair, installation or opening or other causes beyond Contractor's control, (4) unreasonable refusal to agree with engineering change notice programs, (5) negligence by any person other than Contractor or Contractor's authorized agents, (6) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (7) damage caused by containment and/or operation outside the environmental specifications for the Hardware Products, (8) alteration or connection of the Hardware Products to other systems, equipment or devices (other than those specifically approved by Contractor) without the prior approval of Contractor, or (9) any use that is inconsistent with the user manual supplied with the Hardware Product. The warranty period is not extended if Contractor through Check Point repairs or replaces a warranted product or any parts. Contractor may change the availability of limited hardware warranties, at its discretion, but any changes will not be retroactive.

3. HARDWARE RETURN PROCEDURES:

If a Hardware Product or one of its component parts does not function as warranted during the warranty period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide either return and replacement service or replacement with a refurbished part/unit for the Hardware Product under the type of warranty service Check Point designates for that Hardware Product. A defective Hardware Product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference an RMA number issued by an authorized Check Point service representative. To request an RMA number, you or your local Check Point Certified Solution Provider ("CCSP/CSP/ACSP") must contact Check Point's Technical Assistance Center ("TAC") and open a Service Request. You should always register the Hardware Product in your Check Point User Center account. If you do not register the Hardware Product with Check Point, you may be required to present proof of purchase as evidence of your entitlement to warranty service. The Hardware Product's identification number will be required for all RMA cases.

Transportation costs, if any, incurred in connection with the return of a defective Hardware Product to Contractor through Check Point shall be borne by You. Any transportation costs incurred in connection with the redelivery of a repaired or replacement item to You by Check Point shall be borne by Check Point; provided, however, that if Check Point determines, in its sole discretion, that the allegedly defective item is not covered by the terms and conditions of the warranty or that a warranty claim is made after the warranty period, the cost of the repair by Check Point, including all shipping expenses, shall be reimbursed by You.

4. **HARDWARE REPLACEMENT PROCEDURES:**

Contractor through Check Point will attempt to diagnose and resolve your problem over the phone or web. Upon determination of the hardware issue is related to a malfunction of one of the Hardware Product components, an RMA process will be initiated by Check Point's TAC. Check Point's TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement.

For **Warranty Replacement** service, it is required that you deliver the faulty unit to a location Contractor through Check Point designates, and provide courier name and tracking number to Check Point's TAC. After the Faulty unit is returned to Check Point, Check Point will use commercially reasonable efforts to ship the replacement hardware within seven (7) business days. Actual delivery times may vary depending on Your location. Check Point's TAC will send the required hardware to the Hardware Product's physical location, as it appears in your User Center and as verified with You when opening the Support Service Request.

For **Hardware Advanced Replacement**, support options Standard, Standard Onsite, Premium, and Premium Onsite are available for customers who have purchased the Hardware Product support plan with Contractor.

5. **HARDWARE RETURN PROCEDURES:**

If a defective Hardware Product covered under warranty fails to operate within thirty (30) days from its activation, but no more than one hundred and twenty (120) days from the date of Contractor's shipment of the Hardware Product, Contractor through Check Point will provide expedited replacement of a new unit within two (2) business days from Check Point fulfillment hub, following confirmation of any such failure. Customers outside of the fulfillment hub region should allow for additional transit time due to international customs clearance.

6. **ADDITIONAL RESPONSIBILITIES:**

You agree:

- Before Contractor or its partner exchanges a Hardware Product or part, to remove all features, parts, options, alterations, data and attachments not under warranty service and ensure that the Hardware Product is free of any legal obligations or restrictions that prevent its exchange.
- To obtain authorization from the owner to have Contractor or its partner service a Hardware Product that you do not own.
- Where applicable, before service is provided:
 - Follow the service request procedures that Contractor or its partner provides;
 - Backup and secure all programs and data in the Hardware Product;
 - Inform Contractor or its partner of changes in the Hardware Product physical location.
- To provide Contractor or its partner with sufficient and safe access to your facilities to permit Contractor to fulfill its obligations.
- To ship back the faulty Hardware Product (or replaceable unit) suitably packaged according to the guidelines as Contractor through Check Point specified in the letter shipped with the RMA, to the Check Point designated location.
- You shall ship the faulty Hardware Product once TAC approves the RMA and provide the courier name and tracking number to TAC before Contractor through Check Point processes the RMA.
- If you are a customer who has purchased the support plan with Contractor covering Advanced Replacement Service, You will ship the faulty Hardware Product within five (5) business days of the arrival of the RMA.

To securely erase from any Hardware Product you return to Contractor through Check Point for any reason all programs and data not provided by Check Point with the Hardware Product. You acknowledge that in order to perform its responsibilities under this Limited Hardware Warranty, Check Point may ship all or part of the Hardware Product or its software to third party locations around the world, and you authorize Check Point to do so.

EXHIBIT B - CHECK POINT DIRECT SUPPORT PROGRAM:

a. DEFINITIONS:

“Advance Hardware Replacement” means a Hardware replacement service for Ordering Activities who have purchased Hardware Support, whereby after Check Point TAC approves an RMA, Check Point delivers a replacement to Ordering Activity’s Site before returns the faulty hardware to Check Point.

“ACE Partner” means an authorized Check Point partner who is staffed with Check Point Certified Professionals and Appliance Certified Experts (ACE) in accordance with Check Point ACE Partner requirements.

“Activation Date” means the date a License Key is registered for activation of Software within the Check Point User Center.

“Appliance” shall have the meaning set forth herein for the term “Hardware”.

“Business Day” means normal working day in the time zone where the Ordering Activity is located.

“Certified Professional” means an individual who has passed the appropriate current Check Point Certification Test(s) to demonstrate technical competency. The current minimum requirement of a Certified Professional is a Check Point Certified Security Expert (CCSETM) for the current Major Release of Network Software, Check Point Certified End Point Expert (CCEPE) for End Point Software and Check Point Appliance Certified Expert (CCSE ACE) for current Major Release of Hardware.

“Check Point” means Check Point Software Technologies, Inc..

“Ordering Activity” means the party identified as the purchasing organization.

“Designated Contacts” means Ordering Activity named contacts, engineering resource individuals, who are established person-specific email addresses in the User Center account associated with the Customer Support contract. It is expected that these contacts will be Check Point Certified Professionals.

“Device Number” means a unique identifier of a hardware device, which can be located in a label on a Hardware Product. Check Point uses Media Access Control (MAC) Address, Serial Number (SN), or Service Tag Number (STN) as a Device Number, depending on the type of Hardware.

“Documentation” means user and technical manuals provided by Check Point for use with the Software and Hardware.

“Endpoint Security Product(s)” means Check Point product(s) with an Endpoint device security focus.

“Enhancement” means all Software changes, including new releases, new versions, product improvements, system modifications, updates, upgrades, Service Packs, Feature Packs, field modifications, and all Hardware changes, including official Check Point Hardware product enhancements and accessories.

“Error” means an Error in the product, which degrades the product as defined by the Severity definitions, as compared to Check Point published functionality and performance specifications.

“Hardware” means a computing device and/or its component with a specific function and limited configuration ability. The Hardware is sold by Check Point for the purpose of executing the specific Check Point Software supplied with it.

“Information” means any idea, data, program, technical, business, or other intangible information, however conveyed.

“Intellectual Property” means Patents, copyrights, trademarks, and/or trade secrets whose owners have rights at law or in equity to exclude others from exploiting such property.

“Level 1 Support” means the ability to provide general pre and post-sales product information; hardware and software configuration; questions on upgrade Support; collect relevant technical problem identification information; perform base problem determination; provide basic Support on the standard products, protocols and features; replace Field Replaceable Units (FRUs) or whole Hardware units.

“Level 2 Support” means the ability to provide Level 1 Support plus the ability to resolve the majority of misconfigurations, troubleshoot and simulate complex configuration, hardware, and software problems; perform Hardware diagnostics to determine Hardware malfunction; support problem isolation and determination of product specification defects; provide lab simulation and interoperability and compatibility testing for new software and hardware releases prior to being deployed into a Ordering Activity production network; define an action plan; provide advanced Support on all products, protocols and features; have the ability to analyze traces, diagnose problems remotely, and provide Ordering Activity with complete steps to reproduce a problem.

“Level 3 Support” means the ability to provide Level 1 and Level 2 Support plus the ability to provide software enhancements such as patches and Hotfixes, fixing or generating workarounds that address software bugs; troubleshoot bugs that were not diagnosed during Level 2 Support; work with Ordering Activities to resolve critical situations, and building action plans with Ordering Activities to address complex issues.

“License Key” means code provided by Check Point, which activates the Software and enables the Software to operate.

"Major Release" means the current issuance of Software and/or Hardware that is designated by Check Point, as a change in the number or name, signifying a new product level, e.g. Check Point VPN-1 NG with Application Intelligence, NGX, or NGX R65. Hot Fix Accumulators (HFAs), Hotfixes, and/or Feature Packs do not constitute a Major Release change.

"Network Security Product(s)" means Check Point product(s) with network security focus.

"Previous Sequential Release" means Release of Software or Hardware, which has been replaced by a subsequent version of the product.

"Release" means Major Release of the same product.

"Problem Resolution" means the use of reasonable commercial efforts to resolve the reported problem. These methods may include (but are not limited to): configuration changes, patches that fix an issue, replacing a failed hardware, reinstalling the software, etc.

"Respond" means addressing the initial request and taking ownership of the issue.

"Response Time" means the amount of time elapsed between the initial contact by Ordering Activity to Check Point TAC and the returned response to Ordering Activity by Check Point support staff.

"RMA" means Return Material Authorization (RMA), the process of replacing a faulty Hardware or a component of a Hardware product. The process must be authorized by Check Point TAC.

"Service Request (SR)" means a single issue opened with Check Point TAC. The SR number identifies the Service Request. The format for the unique SR number can be as follows: 1-nnnnnnnnnn or 11-nnnnnnnn ("n" is a digit).

"Severity" Definitions for Network Security product(s):

"Severity 1" means

- (a) an Error with a direct security impact on the product;
- (b) an Error isolated to Software or Appliance in a production environment that renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, system down;
- (c) a reported defect in the licensed product in a production environment, which cannot be reasonably circumvented, in which there is an emergency condition that significantly restricts the use of the licensed product to perform necessary business functions; or
- (d) inability to use the licensed product or a critical impact on operation requiring an immediate solution.

"Severity 2" means

- (a) an Error isolated to Software or the Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging;
- (b) a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions but does not completely restrict use of the licensed product; or
- (c) ability to use the licensed product, but an important function is not available, and operations are severely impacted.

"Severity 3" means

- (a) an Error isolated to the Software or Appliance that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;
- (b) a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions, while the defect can be easily circumvented; or
- (c) an Error that can cause some functional restrictions but it does not have a critical or severe impact on operations.

"Severity 4" means

- (a) a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; this is a minor problem and is not significant to operation; or
- (b) an anomaly that may be easily circumvented or may need to be submitted to Check Point Research and Development as a request for enhancement.

"Severity" Definitions for Endpoint Security product(s):

"Severity 1" means

- (a) an Error with a direct security impact on the product; or
- (b) an Error isolated to Software, for which there is no reasonable Workaround, which renders the product inoperative, causing the end-point devices to fail catastrophically, affecting more than 1000 end point devices or 35% of deployed client base (in any case more than 100 affected end-point devices) within a production environment (not pre-deployment or staging) where end-point devices have been interrupted and not recovered; e.g., severe and general deployment wide system impact, systems are down, making end-point devices unable to perform (even with reduced performance) necessary business operations even after a change of, and/or addition of procedures, configurations, applications, tools and/or data.

"Severity 2" means

(a) an Error isolated to Software, for which there is no reasonable workaround, which substantially degrades the usability of the end-point devices, restricting the usage of and/or access to one or more necessary business functions without completely restricting the use of the licensed product, affecting more than 500 end-point devices or 25% of deployed client base (in any case more than 50 affected end-point devices) within a production environment (not pre deployment or staging) where the end-point devices and/or Software may have been interrupted but recovered, in part or completely; e.g., end-point devices are operative but with limited capacity, substantially impacting the end-point devices' ability to perform one or more necessary business functions; end-point devices and/or Software are operative, but an important product function is unavailable or not operating; end-point devices and/or Software may have been interrupted but recovered, in part or completely; inability to connect to the Internet /Intranet; or

(b) an Error causing severe Software deployment/upgrade problems without prohibiting necessary business operations, affecting more than 500 end-point devices or 25% or more of the actual/intended client base (at least 50 devices affected); it may, or may not, be possible to circumvent the error, e.g., inability to install and/or upgrade product, without prohibiting the endpoint devices ability to perform necessary business operations; or business operations are not prohibited but may run with reduced performance.

"Severity 3" means

(a) an Error isolated to Software, for which there is a reasonable Workaround, or an Error that causes only a minor impact on the end-point client. Restriction in usage of one or more features of the licensed product with minor impact of necessary business functions. The Error can cause some functional restrictions but it does not have a critical or severe impact on operations, e.g., the endpoint device is operational but may experience performance or operational limitations; or

(b) an Error isolated to Software only affecting one or a limited number of individual end-point devices, that is not common for the installed end-point device population; it may, or may not, be possible to circumvent the error, e.g., an individual end-point device(s) is encountering issues not common for deployed end-point device client base.

"Severity 4" means a reported anomaly in the licensed product that does not substantially affect endpoint ability to perform normal business operations. This is a minor problem and does not constitute any significant limitation to products ability to allow normal business operation. An anomaly may be easily circumvented, e.g., a product cosmetic anomaly or documentation flaw; end-point devices and/or Software may have been interrupted but recovered.

"Site" means the physical location where System(s) are installed as specified by Ordering Activity in Ordering Activity's User Center account.

"Software" means the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any Documentation supplied in conjunction with, and supplementing such programs, the foregoing being provided to Ordering Activity by way of electronic transmission or by being fixed in media furnished to Ordering Activity.

"Software Subscription" means registered access to modifications, corrections, and/or updates to Software; including Hot Fix Accumulators (HFAs), security fixes, Feature Packs, and/ or major upgrades, provided to Ordering Activity by unlimited web download access or by mail upon Ordering Activity's request. Software Subscription is a deliverable for all Support Contracts.

"Shelf Spare Unit(s)" means Check Point Hardware unit(s) that is stored at Ordering Activity's Site and which is reserved for Hardware replacement usage only in case of failure of Ordering Activity's Hardware which is covered under Check Point On-Site Hardware Support Plan.

"Support" means the technical Support and Hardware replacement services provided by Check Point directly to Ordering Activity as set forth in this Agreement.

"System(s)" means the Hardware, Software and Documentation that have been provided to Ordering Activity by Check Point or Check Point's authorized resellers/partners.

"TAC" means Check Point Technical Assistance Center, which is staffed by Check Point Support personnel providing assistance with diagnosis and resolution of defects and/or failures in Check Point products.

"Workaround" means a change in the followed procedures or data to avoid error without substantially impairing use of the product.

b. CHECK POINT SUPPORT OBLIGATIONS:

Upon Contractor's acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Ordering Activity will be entitled to receive Support according to the features and benefits provided under that offering, subject to these terms and conditions.

i. Technical Support:

For Ordering Activities covered under a valid Check Point Support offering, technical Support will be provided pursuant to the terms of this Section "TECHNICAL SUPPORT." Contractor through Check Point agrees to provide Support, where appropriate, to Ordering Activity, which may include but is not limited to, the following actions:

(a) Provide Ordering Activity with access to product update releases, related Documentation and knowledge articles, upon general commercial release;

(b) Provide Ordering Activity with access to TAC Technical Representatives, who will work with Ordering Activity to diagnose issues, and provide Problem Resolutions, including escalating the issue through TAC management as needed.

- ii. **Hardware Replacement.** For Ordering Activities covered under Hardware Support, Contractor through Check Point will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in the Section "HARDWARE REPLACEMENT."
- iii. **On-site Hardware Support.** For those Ordering Activities whose Hardware Support level includes an on-site service feature, upon Ordering Activity's request, after TAC determines that the hardware issue is related to a malfunction of one of the Hardware components, and after a repair action plan has been defined, Contractor through Check Point will use commercially reasonable efforts to dispatch a Check Point Certified Onsite Technician or ACE Partner to the Site in accordance with the terms and timeframes of such plan as set forth on Exhibit A. Provision of on-site support is subject to the following limitations:

(a) On-site Hardware Support is limited to Advance Hardware Replacement only; it does not include on-site service for Software troubleshooting or any Software related issues.

(b) On-site Hardware Support service may not dispatch a certified technician on-site to help set up the RMA unit outside of Check Point's normal on-site service areas (<http://www.checkpoint.com/services/onsite-availability.html>). Under those situations, Check Point may provide a Shelf Spare solution under specific conditions to ensure a rapid unit replacement at the Ordering Activity's site. Ordering Activity will need to sign up for this service under a separate Shelf Spare Replacement Agreement.

(c) On-site service response times may be dependent upon the Ordering Activity's Site address for the Hardware, the timely arrival of replacement parts at Ordering Activity's Site, and accessibility to the Site. On-site Hardware Support is effective one (1) month from the day it was purchased.

- iv. **On-site Software Support for Critical Severity 1 Issues.** For those Ordering Activities covered under Elite Support, the Ordering Activity shall contact Check Point TAC directly by telephone. After TAC confirms that the matter is a Severity 1 issue, TAC and the Ordering Activity will work diligently, with highly skilled, experienced engineers to resolve the critical situation and to restore operation. In the case the criticality of the issue remains or no progress is made, after four (4) hours, Contractor through Check Point will use commercially reasonable efforts to dispatch a local engineer to Ordering Activity's Site. If no local resources are available, travel arrangements will be made for the next available flight to the Ordering Activity's Site. The engineer will remain on-site until the issue is no longer defined as critical (an acceptable resolution or workaround was achieved) or up to three (3) days, with travel and expense included. Provision of on-site critical Severity 1 case support under Elite Support is subject to the following limitations:

(a) An Elite Ordering Activity is entitled up to three (3) visits on-site a year as required to resolve critical Severity 1 cases.

(b) On-site critical case Support is limited to Software Support only, and does not include on-site service for Hardware issues and Hardware replacement.

(c) On-site critical case Support may not be available for some Check Point Software products or in some geographic regions, and may require a set-up period before it can be made available to Ordering Activities.

(d) For Elite support service for critical issues, which requires fast arrival to the site, Contractor through Check Point will cover all locations which are accessible within 12 hour elapsed commercial travel time from G7 countries hubs (US (mainland), UK, Germany, Italy, France, Japan, and Canada). In some remote locations, entry certifications requirements might add additional time to the engineer arrival on site.

(e) It is necessary that Elite Ordering Activities commit the necessary resources around the clock (24x7) in working with Check Point TAC and/or the engineer towards Problem Resolution of Severity 1 Errors.

- v. **Support Lifecycle.**

(a) Contractor through Check Point provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Check Point will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product's Major Release version. General availability date' is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.

(b) Contractor through Check Point usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Check Point will provide End of Support notification for discontinued Software to Ordering

Activity through an announcement posted on the Check Point Software Support Timeline website at URL:
http://www.checkpoint.com/services/lifecycle/support_periods.html.

(c) Contractor through Check Point provides a comprehensive support lifecycle for its Hardware. Check Point TAC is available for Technical Assistance for up to five (5) years after Check Point's new appliance availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Check Point Software installed on it.

(d) For Software or Operating System installed on Check Point Hardware:

a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Check Point's new appliance availability announcement.

b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Ordering Activity.

c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Check Point's new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Ordering Activity.

(e) Contractor through Check Point provides Hardware Replacement for up to five (5) years after Check Point's new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Check Point's discretion.

(f) Contractor through Check Point will provide the date of Check Point's new appliance availability announcement and End of Support notification for discontinued Hardware to Ordering Activity through an announcement posted on the Check Point Appliance Support Timeline website at URL:
http://www.checkpoint.com/services/lifecycle/appliance_support.html.

(g) Contractor through Check Point reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites.

vi. Nonconformance. If Contractor through Check Point determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Check Point related problem, then under Check Point's Support plan, Check Point shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Check Point will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

vii. Exclusions.

Support does not include the following items or actions:

(a) Step-by-step installation of Software or Service Packs;

(b) Onsite services (unless Ordering Activity's level of Support, as purchased, includes this feature), Professional Services, or Educational Services;

(c) Modification of software code, security-policy configuration, audits, or security design.

Contractor through Check Point shall have no obligation to Support:

(a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Contractor through Check Point;

(b) Product problems caused by Ordering Activity negligence, misuse, misapplication, or use of the product other than as specified in the Check Point user manual, or any other causes beyond the control of Contractor through Check Point;

(c) Product installed on any computer hardware that is not supported by Contractor through Check Point;

(d) Product not purchased from the Contractor's then-current GSA Price List;

(e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;

(f) Products that are past their End-of-Support date.

Contractor through Check Point shall have no obligation to Support Ordering Activity if:

(a) Appropriate payment for Support has not been received by Contractor; or

(b) Ordering Activity's annual Support term has expired without renewal.

- viii. Reporting Non-Check Point Errors to Ordering Activity. Upon working the Service Request under normal processes, and with appropriate management review, if at that point Contractor through Check Point believes that a problem reported by Ordering Activity may not be due to an error in the Check Point product, Check Point will notify Ordering Activity. At that time, Ordering Activity may: (a) instruct Check Point to proceed with problem determination at Ordering Activity's possible expense as set forth herein; or (b) instruct Check Point that Ordering Activity does not wish the problem to be pursued at Ordering Activity's possible expense.

If Ordering Activity requests that Contractor through Check Point proceed with problem determination at Ordering Activity's possible expense and Check Point determines that the error was not due to the error in the product, Ordering Activity shall pay Contractor, at the Contractor's Check Point then-current GSA rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Ordering Activity shall not be liable for:

(a) problem determination or repair to the extent the problems are due to anomalies in the Check Point product; or

b) work performed after Ordering Activity has notified Contractor through Check Point that it no longer wishes problem determination to be continued at Ordering Activity's possible expense (such notice shall be deemed given when actually received by Check Point).

If Ordering Activity instructs Contractor through Check Point that it does not wish the problem pursued at Ordering Activity's possible expense or such determination requires effort in excess of Ordering Activity instructions, Check Point may, at its sole discretion, investigate the anomaly with no liability thereof.

c. ORDERING ACTIVITY OBLIGATIONS:

- i. Staffing. All Ordering Activity personnel contacting Contractor through Check Point for Support must be fully trained on both the Major Release of the Check Point Software and/or Hardware and the current issue for which Ordering Activity requires assistance.
- ii. Named Designated Contacts. Ordering Activity agrees that contact with Contractor through Check Point will be through the specified number of Designated Contacts. Ordering Activity is responsible for specifying and updating valid Designated Contacts in the Check Point User Center with person-specific email addresses. Ordering Activity agrees that access to any Support deliverable, Software Subscription downloads and SecureKnowledge will be through these Designated Contacts, not any alias. The ability to add additional contacts may be purchased per the prevailing Support Plan program guidelines.
- iii. Network Access. To the extent possible, and as requested by Contractor through Check Point, Ordering Activity understands that it may be necessary to provide Check Point or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Check Point determines that its Technical Representative needs to access Ordering Activity's network in order to remotely diagnose an issue. Ordering Activity understands that if access is not provided as requested by Check Point, problem determination will be slower or impaired.
- iv. Configuration Files. Ordering Activity agrees to maintain a backup of the configuration that can be used to restore the Hardware.
- v. System Information. Ordering Activity must provide to Contractor through Check Point information for each System under a Support Plan by registering all products in the Ordering Activity's User Center Account with accurate details:
 - (a) Product License Key or Device Number;
 - (b) Physical Site location of the Hardware product; and
 - (c) Site contact person.

If Ordering Activity physically moves any Hardware from the original Site to another location, Ordering Activity must inform Contractor through Check Point of such change immediately with updated Site location and contact. It is Ordering Activity's responsibility to update such change in the Ordering Activity's User Center Account. Prior to Check Point's receipt of such notification from Ordering Activity, Check Point shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.

- vi. Backup and Removal of Data. To reconstruct lost or altered Ordering Activity files, data, or programs, Ordering Activity must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Contractor through Check Point, Ordering Activity agrees to:

- (a) backup and secure all programs and data contained in the Hardware;
 - (b) securely erase all programs and data not provided by Contractor through Check Point with the Hardware product. Ordering Activity acknowledges that, to perform its responsibilities under this Replacement Service, Check Point may ship all or part of the Hardware product or its Software to third party locations around the world, and Ordering Activity authorizes Check Point to do so; and
 - (c) remove all features, parts, options, alterations, and attachments not provided by Contractor through Check Point with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.
- vii. On-site Access. Where applicable, Ordering Activity agrees to provide Contractor through Check Point or its authorized partner with sufficient and safe access to Ordering Activity's facilities in order to permit Check Point to fulfill its obligations.
- viii. Shelf Spare Units. In the event that Ordering Activity has purchased Hardware Support with a Shelf Spare Replacement solution, Ordering Activity agrees that Contractor through Check Point shall, at all times, remain the sole owner of the Shelf Spare Unit(s) stored at the Ordering Activity's premises. Ordering Activity agrees that each Shelf Spare Unit stored at Ordering Activity's on-site location is to be used ONLY in case of Hardware failure approved by Check Point's TAC. Each Shelf Spare Unit's on-site location will be required to take an inventory of Hardware physically in stock on a quarterly basis and provide the results to the Check Point Logistics at logistics-reports@checkpoint.com. If it has been determined that the Shelf Spare Unit on-site location does not have the relevant Check Point inventory in stock and the missing inventory cannot be found or accounted for, or if the inventory is damaged as result of Ordering Activity's practices, the item shall be considered lost, and Check Point shall have the right to seek reimbursement from the Ordering Activity at the standard Check Point list price.

In the case that Contractor through Check Point will certify a local ACE Partner or subcontractor to provide the on-site Replacement Service, Check Point shall have the right to ask the Ordering Activity to send, at Check Point's expense, the Shelf Spare Unit from the Ordering Activity premises to the relevant partner at any time. In case this Support Plan is not renewed, Ordering Activity agrees to send the Shelf Spare Unit back to Check Point, or pay the full Check Point list price of a new unit.

d. HARDWARE REPLACEMENT:

- i. Hardware Return Procedure. If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide Advance Hardware Replacement service with a refurbished part /unit for the Hardware under the type of Hardware Support Plan Check Point designates for that Hardware. A defective Hardware product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference a Returned Material Authorization ("RMA") number issued by an authorized Check Point service representative. To request an RMA number, Ordering Activity must contact Check Point TAC and open a Service Request. Ordering Activity should always register the Hardware Product in Ordering Activity's Check Point User Center account. If Ordering Activity does not register the Hardware Product with Check Point, Ordering Activity may be required to present proof of purchase as evidence of entitlement to Hardware Support service. The Hardware Product's Device Number will be required for all RMA cases.
- ii. Hardware Replacement Procedure. For Order Activities who have purchased Support for their Hardware, Contractor through Check Point will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by Check Point TAC. Check Point TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Check Point will send the required hardware to the Site location, as it appears in Order Activity's User Center and as verified with Order Activity when opening the Support Service Request, in accordance with the Hardware Support Plan Check Point designates for that Hardware.

Order Activity must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Contractor through Check Point in the RMA letter shipped with the replacement, to a location that Check Point designates; return shipment of the faulty Hardware should be made within five (5) business days of the arrival of the replacement or approval of the RMA for Shelf Spare Unit usage.

e. TECHNICAL SUPPORT:

- i. Web-based Support. Check Point web-based Support available at URL: <https://support.checkpoint.com> provides the Ordering Activity access to:

(a) Documentation, containing product documentation, release notes, troubleshooting guides and technical white papers about Check Point Software and Hardware products, as releases become generally commercially available.

(b) SecureKnowledgeSM, a self-service knowledge base, restricted repository of thousands of technical documents as well as tools covering everything from planning installation and upgrades, to understanding error messages and fixing specific known issues. Technical solutions, how-to's, and troubleshooting documents written by Check Point engineers and technical staff are added daily. Ordering Activity may have Advanced or Expert Access in accordance with their Support level and the specifications of this Agreement. When a solution is identified to solve an issue, Check Point TAC may share this solution with Ordering Activity via email or verbal communication.

(c) Software Subscription Downloads, restricted download site for the sole use of the Supported Ordering Activity; includes latest product upgrades, Hot Fix Accumulators (HFAs), Feature Packs, security fixes, tools, and utilities for the contract term. Software Subscription guarantees that Check Point solutions are kept as current as possible through the latest product enhancements and capabilities.

For Major Product releases, Ordering Activity may request Contractor through Check Point to ship a Media Kit that includes Software upgrade package.

(d) Product Forums, containing shared knowledge of Check Point products and solutions within an online community of customers, partners and employees, as well as news on Check Point products and technologies. Support Ordering Activities can view and post on the discussion threads in all Forums.

ii. Contact TAC. Ordering Activity's access to TAC should be either by telephone, by web request, or by live chat.

(a) By Telephone: Contact the nearest TAC (refer to URL: <http://www.checkpoint.com/services/contact/index.html>.) An Automatic Call Distribution System will prompt Ordering Activity to select appropriate Support Plan options. After Ordering Activity is directed to a TAC Technical Representative, Ordering Activity's email address must be provided. Once TAC verified Ordering Activity is a Designated Contact and account has a valid Support contract, TAC will inquire information about the issue and create a Service Request in the Check Point database.

(b) By Web Request: Log into User Center, under the "Support" Tab, select the "Create Service Request" link. Complete the request form with all of the appropriate information about the issue and submit the request. A Service Request will be generated in the Check Point database.

PLEASE NOTE: DO NOT submit a Service Request for a Severity 1 issue via the Web request form. For a Severity 1 case, please contact Contractor through Check Point by telephone and select the appropriate options for your support.

(c) By Live Chat: Log into User Center, under the "Support" Tab, select "Live Chat" icon. Live Chat is for quick and simple questions about Check Point products and services. Any issue requires troubleshooting must be submitted by telephone or by web request.

(d) By Email: Contractor through Check Point does not allow opening a Service Request via email. All requests should be opened by Telephone or by web request. Correspondence on an open Service Request may be made via email, as long as the Ordering Activity Designated Contact writes a reply to emails received from Check Point TAC.

Availability and accessibility of TAC is in accordance with the specifications of this Agreement, subject to the situations set forth in Section 8.1 Force Majeure.

	Standard	Premium	Elite
TAC Availability	5x9 Business Day	7x24 Every Day	7x24 Every Day
Unlimited Service Requests	Yes	Yes	Yes

iii. Technical Support Procedures. Under Check Point's Software support plan, Check Point TAC utilizes a multi-tier support model for Problem Resolution. When initial contact with TAC is made, a Technical Representative or Web Service Request Tool will validate Ordering Activity information, contract information, Device Number, and gather details relevant to the question or issue. A unique Service Request (SR) number will be assigned and delivered to the Ordering Activity Designated Contact, either verbally, via Web request, or via email. This SR number will be used to track any given issue from initial contact to final Problem Resolution. If appropriate, an issue will be reproduced in the Check Point Test Lab. Additional testing and problem duplication may take place in a network laboratory environment. Further investigation, including additional troubleshooting or debugging activity may be required. Based on the results of the Test Lab investigation, an issue may be resolved, or, if an anomaly is identified, elevated to the appropriate Check Point Team for final Problem Resolution.

Contractor through Check Point agrees to use commercially reasonable efforts to work with the Ordering Activity for Problem Resolution for an issue in accordance with the specifications of these terms. Timely efforts must be made by all parties involved. If communication from Ordering Activity ceases without notice, after five (5) business days, Check Point may, upon notice, close a Service Request due to inactivity on the part of the Ordering Activity. A Service Request may be reopened within thirty (30) consecutive days of closure. Once a Service Request is closed for thirty (30) consecutive days, this issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new Service Request will be opened, and all pertinent materials may need to be resubmitted before work can continue.

- iv. Severity Level Response Time and Resource Commitment. Contractor through Check Point agrees to use commercially reasonable efforts to respond to Ordering Activity requests based on the Severity of the issue as follows:

Severity Level	Response Time (in accordance with Support Plan)			Commitment
	Standard	Premium	Elite	
Severity 1	30 minutes	30 minutes	30 minutes	Check Point and Ordering Activity will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.
Severity 2	4 Hours	2 Hours	30 Minutes	Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution to obtain workaround or reduce the severity of the Error and alternative resources during non Standard Business Hours.
Severity 3	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will commit full time resources during normal business hours for Problem Resolution, to obtain workaround or reduce the severity of the Error.
Severity 4	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will provide Resources during normal business hours for Problem Resolution.

Note: Contractor through Check Point does not guarantee the resolution of a problem within the times specified.

For Severity definitions for Network Security Product(s) or Endpoint Security Product(s), refer to the Section "DEFINITIONS," "Severity" Definitions for Network Security Product(s) and "Severity" Definitions for Endpoint Security product(s).

The response times set forth in this Section constitute targeted goals of the Technical Support to be provided by Contractor through Check Point to Ordering Activity, and it is understood that Check Point shall use commercially reasonable efforts to respond to Ordering Activity requests within the target times set for the relevant Severity level. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Check Point Support obligations under this Agreement.

- v. Escalation Process and Procedure.

(a) Ordering Activity-initiated Escalation: Under Check Point's Support plan, some work items (especially those associated with critical situations) may need to be expedited. When this becomes the case, Ordering Activity shall notify Check Point TAC of the critical situation. If TAC determines that sufficient information has been provided by Ordering Activity and the escalation is accepted, Check Point will work with Ordering Activity on providing the appropriate solution. The escalation begins in accordance to Check Point standard business practices. Upon request, Check Point may provide an action plan to Ordering Activity that may include (but is not limited by): problem statement, next action items to resolve the issue and time estimates on these action items.

(b) Check Point Internal Escalation Process: When TAC determines an issue needs internal escalation, the issue receives a combination of increasing levels of engineering expertise and managerial attentions in accordance with Check Point standard business practice. Except for the case of a Ordering Activity-initiated Escalation in accordance with Section 5.5 (c) below, that issue need not be escalated to a higher managerial level until the Severity of the issue increases or progress toward resolution ceases or is unduly delayed.

(c) Management Escalation: If Ordering Activity feels that the issue is not moving forward in an appropriate timeframe to closure, and/or an issue requires managerial attention, for immediate escalation, Ordering Activity can either request Technical Representative to connect the Ordering Activity to a Team Leader or contact the Team Leader of the Technical Representative handling the case directly. Team Leader's contact details are located at the bottom of the Service Request email. Regardless of the total elapsed time of an outstanding Service Request, the point of escalation shall be initiated at the Technical Representative level, escalated to the Team Leader(s), followed by TAC Manager(s), the TAC Director(s), and then the TAC Vice President. For the most current list of Check Point TAC Escalation Management contacts, refer to Escalation Management link in Service Request Web tool in the User Center.

- e. CHECK POINT DIRECT SUPPORT PLAN DESCRIPTIONS

- i. Check Point Support Offerings. In order to meet the needs of its enterprise Ordering Activities, Contractor through Check Point offers its Enterprise Support program for the support of Check Point Software products. This provides a total support service solution directly to enterprise/business customers. Below, are the program levels available under Check Point's direct Enterprise Support program:

Direct Enterprise Support
• Enterprise Software Subscription • Enterprise Standard • Enterprise Premium • Enterprise Elite

ii. Support Plan Descriptions.

- a. Enterprise Software Subscription: Enterprise Software Subscription ensures uninterrupted security and protection for all Check Point products, with access to critical hot fixes, service packs, and major upgrades for a full year. Take advantage of the latest security features as soon as they're available, protecting your business and your investment while maximizing your ROI with Check Point solutions.
- Ensure continuous security with access to critical hot fixes and service packs
 - Maximize ROI and investment with access to major upgrades and enhancements
- b. Enterprise Standard Support: Check Point Enterprise Standard Support delivers all the benefits of Enterprise Software Subscription with comprehensive, unlimited support from our experienced and certified security experts. With online tools and extensive resources devoted to Check Point security, you can count on Check Point to resolve your mission-critical issues quickly and efficiently:
- Software Subscription - Access critical hot fixes, service packs, and major upgrades.
 - Protect your business with unlimited, comprehensive support from experienced engineers
 - Ensure business continuity with 5x12 business day Web, Chat and Phone support and 4 hour committed response
 - Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate, and track Service Requests online including active notifications via mail or SMS
 - Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on new materials posted in your subject area.
 - Appliance Support
 - i. Replacement units shipped same business day; delivery usually within 2-3 business days
 - ii. Efficient hardware diagnosis using advanced tools
 - iii. Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts
 - Optional Upgrade to Standard Onsite Support
 - i. 5x8x Next Business Day onsite service
 - ii. Delivery and basic installation of replacement hardware by a certified engineer
 - iii. Available in over 250 locations world wide
- c. Enterprise Premium Support: Check Point Enterprise Premium Support delivers all the benefits of Enterprise Software Subscription with comprehensive, 7x24 unlimited support from our experienced and certified security experts. With online tools, global 7x24 service centers, and committed 30 minute response times, you can count on Check Point to resolve your mission-critical issues quickly and efficiently.
- Software Subscription - Access critical hot fixes, service packs, and major upgrades.
 - Protect your business with unlimited, comprehensive support from experienced engineers and 30 minute response with Fast Path to premium desk
 - Ensure mission-critical support with 7x24 support and 30 minute committed TAC response for severity 1 issues and 2hour response for severity 2
 - Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate upon, and track Service Requests online including active notifications via mail or SMS
 - Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on any new material which posted in your subject area.
 - Appliance Support
 - i. Replacement units are shipped by Next Flight-Out/ Express Delivery (in mainland US and European Union), Appliances are shipped during normal business hours and could arrive during off hours or next business day until 9AM.
 - ii. Efficient hardware issue diagnosis using advanced tools
 - iii. Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts
 - Optional upgrade to Premium On-site Support

- i. 7x24 hours onsite service
 - ii. Delivery and basic installation of replacement hardware by a certified engineer
 - iii. Available in over 250 locations world wide
- d. **Enterprise Elite Support:** Check Point Elite delivers 7 x 24 x 365 support plus on-demand expert care wherever you need it. With committed response times, advanced self-help tools and priority handling, Elite Support will minimize business downtime and keep your network running.
 - 24-hour on-demand onsite engineer to resolve critical software cases
 - Fastest Response Times – 30 minutes for Priority 1 and 2 cases
 - Priority case handling and fast path escalations
 - Increased productivity and uptime with expert knowledge transfer, tools and techniques
 - Appliance Support
 - i. Next flight out hardware replacement service
 - ii. Enhanced Return Material Authorization (RMA) processing
 - Elite Onsite Support
 - i. Extends the benefits of Elite Support with 4-hour RMA onsite hardware care for the fastest logistics. Check Point provides the delivery and basic installation of replacement hardware by a certified engineer with 4 hours following RMA determination.
- e. **Direct Enterprise Support Price Calculation:** The cost of Enterprise Support is calculated using the account rate multiplied by the sum of product list price within the included account(s). Product list price is determined based on the product value in the current Check Point Price List. The account rate is based on the sum of product price list for all products included under the Enterprise Support contract. The applicable GSA discount will then be applied to the Ordering Activity:

Program Name	Enterprise Software Subscription	Enterprise Standard Support	Enterprise Premium Support	Enterprise Elite Support
Part Number	CPES-SS	CPES-SS-Standard	CPES-SS-Premium	CPES-SS-Elite
Install Base Value (SW)				
<\$50,000	15%	30%	40%	43%
\$50,001 - \$100,000	14.5%	28%	36%	39%
\$100,001 - \$250,000	14%	26%	33%	36%
\$250,001 - \$500,000	13.5%	24%	30%	33%
\$500,001 - \$1 million	13%	22%	27%	30%
\$1 million and above	12.5%	20%	24%	27%

- f. **Appliance Support:** Check Point Appliance Support provides comprehensive solution for HW & SW support, including diagnosis, resolution and parts /unit replacement services when applicable, according to SLAs corresponding with Check Point's support programs.

Direct Appliance Support (EBS) – List price of the support is calculated by multiplying the applicable rate in the below table, times the list price of the applicable appliance. The applicable GSA discount will then be applied to the Ordering Activity. The exception is for legacy 2 blade appliances, list price is established as explained in the below table:

Product Range	Standard	Standard RMA Next business day onsite**	Premium*	Premium RMA 4 hours onsite**	Elite***	Elite RMA 4 hours onsite**
	CPES-SS-STANDARD Annual support rate	CPES-SS-STANDARD- ONSITE	CPES-SS-PREMIUM Annual support rate	CPES-SS-PREMIUM- ONSITE	CPES-SS-ELITE Annual support rate	CPES-SS-ELITE- ONSITE
High End	<u>12%</u>	<u>20%</u>	<u>17%</u>	<u>23%</u>	<u>20%</u>	<u>26%</u>
Mid Range	<u>12%</u>	<u>22%</u>	<u>17%</u>	<u>25%</u>	<u>20%</u>	<u>28%</u>
Low End	<u>12%</u>	<u>27%</u>	<u>17%</u>	<u>30%</u>	<u>20%</u>	<u>33%</u>
2 Blade appliance xx2 series (like UTM-1 272,572 or NGX non Total Security)	Standard account rate	Standard account rate + 10%	Premium account rate	Premium account rate + 8%	Elite account rate	Elite account rate + 8%
* Next Flight Out/Express Delivery is available in the European Union and mainland US. Appliances are shipped during normal business hours and may arrive during off hours or next business day until 9AM.						

** Onsite services are provided world wide by Check Point certified technicians. For available locations [click here](#).

*** Emergency engineer dispatch for critical software issues [for more info click here](#)

For other locations contact [Check Point Onsite services](#).

Note: Onsite Hardware Support becomes effective one (1) month from the day it was purchased.

Note: All other Check Point appliances that do not appear in the Appliance Classification table receives regular account rate and no onsite service is available.

Note: customers may upgrade support for specific appliances based on their operational needs regardless to the customer's User Account Service Level Agreement.

Appliance classification:

Appliance classification				
Appliance Range	Security Gateway Appliances	Smart-1	VSX-1	Dedicated Gateways
High End	12400 Appliances 12600 Appliances 21400 Appliances 61000 Appliances Power-1 5075 / 5077 Power-1 9075 / 9077 Power-1 11xxx series IP 1285 / 1287 IP 2455 / 2457	Smart-1 50 Smart-1 150	VSX 12400 VSX 12600 VSX 21400 VSX-1 3070 VSX-1 9070 VSX-1 9090 VSX-1 11xxx series VSX-1 112xx series	DLP-1 9571 IPS-1 9070 IPS-1 5070 Connectra 9072
Mid Range	4600 Appliances 4800 Appliances 12200 Appliances UTM-1 274 / 276 / 278 UTM-1 574 / 576 / 578 UTM-1 1073 / 1075 / 1076 / 1078 UTM-1 2073 / 2075 / 2076 / 2078 UTM-1 3073 / 3075 / 3076 / 3078 IP 295 / 297 IP 395 / 397 IP 565 / 567 IP 695 / 697	Smart-1 5 Smart-1 25	VSX 12200	DLP-1 2571 IPS-1 2070 IPS-1 4070 Connectra 270 Connectra 3070
Low End	2200 Appliances 4200 Appliances UTM-1 134 / 136 / 138 SG86*			
* On-site services for SG82 & SG86 include only product replacement (w/o a technician). ▶ The above special support-rates apply to Software Blades based Appliances with 3 blades (and above), NGX based UTM-1 Total Security and Power-1 Appliances only. ▶ For NGX UTM-1 non Total-Security Appliances, please use the regular account rate. ▶ UTM-1 Edge RMA is shipped Next Business Day for all SLAs. ▶ Regular account rates apply to all other Check Point appliances that do not appear in the above table (e.g. UTM-1 Edge) and no on-site services are available (excluding 2 Blade appliances or NGX non Total Security). ▶ For IAS (Integrated Appliance Solutions) support offering and rates contact Check Point Onsite Services. ▶ For UTM-1 xx50 series, you can purchase only Premium/Standard/Elite Support, On-site Services are not available (unless it is on-site renewal).				

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

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Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134

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

1. **Scope.** This Rider and the attached **Cisco Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

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

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

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

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

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

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

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

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

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

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

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

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

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

- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

CISCO SYSTEMS, INC.

CISCO SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

September 24, 2013 as provided on Cisco.com: http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html

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- (v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or
- (vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

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www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export_contract_compliance.html

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Cisco Supplemental EULAs (SEULAs) as provided on September 24, 2013

Pg Coverage	Specific SEULA topic	Reference
3 Cisco Meraki Cloud Networking	Cisco Meraki Cloud Networking	DOC
9 Cloud and Systems Management DOC-19972	Cisco Active Network Abstraction	
10 Cloud and Systems Management DOC-67346	Cisco Cloud Portal	
10 Cloud and Systems Management	Cisco Workplace Portal	DOC-67346

12 Cloud and Systems Management	Cisco Configuration Engine 3.0 Media and Developer Kit	
DOC-13883	13 Cloud and Systems Management	Cisco Connected Grid Network
Management System	DOC-68737	
14 Cloud and Systems Management	Cisco Intelligent Automation for Cloud	DOC-68556
14 Cloud and Systems Management	Cisco Intelligent Automation for Compute	DOC-68556
14 Cloud and Systems Management	Cisco Intelligent Automation for SAP	
DOC-68556	16 Cloud and Systems Management	Cisco Prime LMS 4.1
	DOC-58713	
16 Cloud and Systems Management	Cisco Prime Infrastructure	DOC-58713
18 Cloud and Systems Management	Cisco Prime Central	DOC-58855
14 Cloud and Systems Management	Cisco Process Orchestrator	
DOC-68556	14 Cloud and Systems Management	Cisco Server Provisioner
	DOC-68556	
14 Cloud and Systems Management	Cisco Tidal Enterprise Scheduler	DOC-68556
	Cisco Tidal Enterprise Scheduler	
20 Cloud and Systems Management	(Cisco Cloud Portal, Workplace Portal and Cisco Service Connector)	
DOC-68700		
14 Cloud and Systems Management	Cisco Tidal Performance Analyzer	DOC-68556
22 Cloud and Systems Management	Cisco Tidal Intelligent Automation	DOC-31651
24 Cloud and Systems Management	Cisco Unified Provisioning Manager	
DOC-21311	24 Cloud and Systems Management	Cisco Unified Operations Manager
	DOC-21311	
24 Cloud and Systems Management	Cisco Unified Service Monitor	DOC-21311
24 Cloud and Systems Management	Cisco Unified Service Statistics Manager	DOC-21311
26 Collaboration	Cisco Magento Managed Services	DOC
29 Collaboration	Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation	DOC
31 Collaboration	Cisco Unified Communications Manager 7.X NFR Kit	DOC-19231
33 Collaboration	Cisco Unified Communications Manager 8.X NFR Kit	DOC-16947
35 Collaboration	Cisco Unified Video Conferencing	
DOC-29311	35 Collaboration	Cisco Unified
Videoconferencing Manager	DOC-29311	
37 Routers	CSR 1000V	DOC-62134
39 Security	Cisco AnyConnect Secure Mobility Client	DOC-1
46 Security	Cisco ASA 5585-X CX-10 Web Security Essentials	DOC-61013
	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility & Control	DOC-2
47 Security	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Web Security Essentials	DOC-3
49 Security	Cisco ISE Wireless	DOC-4
50 Security	Cisco ISE Wireless Upgrade	DOC-5
51 Security	Cisco ISE Advance	DOC-6
52 Security	Cisco ISE Migration	DOC-7
53 Security	Cisco ISE All-in-One	DOC-8
54 Security	Cisco Content Security Software (formerly Cisco IronPort Email and Web Security Appliances and Security Management Application)	DOC
56 Security	Cisco ASA 1000V Cloud Firewall	DOC-11
59 Security	Cisco Integrated Security Appliance (ISA)	DOC-12
61 Security	Cisco ACS (all-in-one version)	DOC-14
63 Security	Cisco TelePresence Commercial Express	DOC-29311
35 TelePresence	Cisco TelePresence Multipoint Switch 1.5	DOC-14958
65 TelePresence		
		DOC
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		1495
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35,65 TelePresence	Cisco TelePresence Manager	DOC-29311
65 TelePresence	Cisco TelePresence Primary Codec	DOC-14958
		DOC

		- <u>1495</u> 8	
35,65 TelePresence	Cisco TelePresence Express Multipoint Switch		DOC-29311
65 TelePresence	Cisco TelePresence Express Manager System		DOC-14958
67 TelePresence	Cisco TelePresence Multipoint Switch		DOC-26211
68 TelePresence	CTS Management		DOC-20211
69 Video	Cisco Video Control Plane and CDN Manager		DOC-66875
71 Video	Cisco Videoscape Media Managed Services and Videoscape Media Suite Software		DOC-31551
71 Video	Cisco Videoscape Media Suite CMS		DOC-31151
71 Video	Cisco Videoscape Media Suite Entitlement		DOC-31151
71 Video	Cisco Videoscape Media Suite Publisher		DOC-31151
71 Video	Cisco Videoscape Media Suite Streaming Player		DOC-31151
73 WebEx	Cisco WebEx Meeting Server		DOC
77 WebEx	Cisco WebEx Social		DOC

Cisco Meraki Cloud Networking	Cisco Meraki Cloud Networking	DOC

Meraki LLC

660 Alabama Street

San Francisco, CA 94110

Last Updated May 30, 2013

48 SUPPLEMENTAL END USER LICENSE AGREEMENT

THIS SUPPLEMENTAL END USER LICENSE AGREEMENT (THIS “**AGREEMENT**”) SUPPLEMENTS AND AMENDS THE TERMS OF THE CISCO SYSTEMS, INC. (“**CISCO**”) END USER LICENSE AGREEMENT AVAILABLE AT THE FOLLOWING WEB ADDRESS: <http://www.cisco.com/go/eula> (THE “**EULA**”). THIS AGREEMENT FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MERAKI LLC AND ITS AFFILIATES, INCLUDING CISCO, IT'S PARENT COMPANY (“**MERAKI**”) AND GOVERNS YOUR ACQUISITION AND USE OF MERAKI PRODUCTS. PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH YOU MAY USE OUR FREE WEB AND MOBILE APPS, PURCHASE HARDWARE FROM US OR OUR AUTHORIZED RESELLERS, AND PURCHASE A LICENSE TO USE OUR PROPRIETARY WEB-BASED HOSTED SOFTWARE PLATFORM THAT INTERACTS WITH OUR HARDWARE. , YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO USE OUR PRODUCTS IN COMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT USE OUR PRODUCTS.

The terms “Customer,” “you,” “your,” and “yours” refer to you, the end GSA customer, the authorized entity permitted to use the Products, whether obtained directly from Meraki or through one of our authorized resellers. The terms “Meraki” “we,” “us,” and “our” refer to Meraki, LLC, a Delaware limited liability company with offices at 500 Terry Francois Street, San Francisco, California, 94158. . For any material modifications to this Agreement, such modifications will be effective if they are stated in a writing, signed by both parties.

49 ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

“**Agent Software**” means Meraki’s downloadable software client that is installed on a computer or mobile device as part of the Systems Manager application.

“**Apps License**” has the meaning given to it in Section 3.2, below.

“**Customer Content**” means content prepared by you for use with the Products, whether or not provided to Meraki, including logos, splash pages, network configurations, and preferences.

“**Device Management Functionality**” means the actions that may be performed by Customer or by Meraki on a mobile device or other device (e.g., a laptop computer) managed by our Systems Manager product, including: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots (on computers only); (iv) set and enforce policies; and (v) install and remove apps (on mobile devices only).

“**Documentation**” means any user instructions, manuals, Specifications, or other documentation provided by Meraki, at <http://meraki.cisco.com> that relates to the use of the Products, including any Modifications.

“**Distributor**” has the meaning given to it in Section 3.7, below

“**End Users**” means those persons who obtain access to your Network.

“**Feedback**” has the meaning given to it in Section 5.1, below.

“**Firmware**” means our proprietary software embedded in or otherwise running on the Hardware.

“**Firmware License**” has the meaning given to it in Section 3.1, below.

“**Governing Documents**” has the meaning given to it in Section 8.1, below.

“**Hardware**” means the Meraki hardware products listed on an Order.

“**Hosted Software**” means our proprietary, web-based software platform, including the interface known as the

"Dashboard" and any Agent Software, but specifically excluding the Web Apps.

"**Hosted Software License**" has the meaning given to it in Section 3.1, below.

"**Intellectual Property Rights**" means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisionals, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

"**Licenses**" means, collectively, the Firmware License, the Hosted Software License, and the Apps License.

"**Mobile Apps**" means the Agent Software for mobile devices.

"**Modification**" or "**Modifications**" means all changes incorporated into or used with the Software or Documentation, including enhancements, standard releases, and patches.

"**Network**" means your local area network, created in whole or in part by use of our Products.

"**Order**" means a purchase order submitted by you either directly to Meraki or to one of our authorized resellers with respect to the purchase of the hardware products, software products, and related licenses listed on such Order.

"**Products**" means, collectively, the Hardware, the Software, the Documentation, and the Support Services.

"**Purchase Price**" means the aggregate price you paid for the Products listed on the applicable Order.

"**RMA**" has the meaning given to it in Section 7.2, below.

"**Service Level Agreement**" means the Service Level Agreement included as Attachment 1, which governs the terms of the Service Level Warranty.

"**Service Level Warranty**" has the meaning given to it in Section 7.1, below.

"**Software**" means, collectively, the Firmware, the Hosted Software, and the Web Apps.

"**Specifications**" has the meaning given to it in Section 4.1, below.

"**Systems Manager**" means the Web App currently known as Systems Manager.

"**Systems Manager Data**" means the data collected through the Device Management Functionality and otherwise through Systems Manager.

"**Support Services**" means the customer support services described below in Attachment 2.

"**Term**" means the term of the Hosted Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Hosted Software Licenses so that the Term with respect to all such licenses expires at the same time in accordance with the provisions of Section 6.1, below.

"**Traffic Information**" means, collectively, information about devices that connect to the Network, such as MAC address, device type, operating system, geolocation information, and information transmitted by devices when attempting to access or download data or content (e.g., hostnames, protocols, port numbers, and IP addresses) via the Network.

"**Warranty Period**" means, with respect to any item of Hardware, the greater of one year or the warranty period set forth in the applicable Specifications, commencing, in either case, on the date the applicable Hardware is shipped to Customer in fulfillment of the Order.

"**Web Apps**" means the web-based applications (available to you at <http://meraki.cisco.com>) currently known as "Mapper," "Stumbler," and "Systems Manager."

50 ARTICLE 2 SERVICES

2.1. Meraki Responsibilities. If you have purchased a Hosted Software License, we will provide you with access to the Hosted Software commencing as of the date your Order ships through the expiration of the Term, subject to the terms of this Agreement.

2.2. Customer Responsibilities. You are responsible for your use of the Products in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) promptly updating the registration information of the primary account holder for the Hosted Software if it changes or is no longer current, accurate and complete; (ii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Software, and notifying Meraki promptly of such unauthorized access or use; (iii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iv) obtaining and maintaining all Hardware and other communications equipment needed to access the Hosted Software or Web Apps and for paying all required third-party access charges (v) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of all Customer Content; and (vi) complying with all applicable local, state, federal, and foreign laws in using the Hosted Software, or Web Apps.

ARTICLE 3 LICENSES

3.1. Firmware License and Hosted Software License. Subject to the terms and conditions of this Agreement, Meraki grants you a non-sublicensable, non-transferable (except as otherwise provided herein) and non-exclusive license, for the duration of the Term, to (i) use the Firmware only for internal purposes, in object code form, as embedded in, or for execution on, the Hardware (the "**Firmware License**"), and (ii) access the Hosted Software via a web browser and use the Hosted Software solely for internal business purposes (the "**Hosted Software License**").

3.2. Apps License. If you access any of the Web Apps, including the download and/or installation of any related Agent Software, or download any Mobile App, then, subject to the terms and conditions of this Agreement, Meraki grants you an individual, personal, non-sublicensable, non-exclusive, and non-transferable (except as otherwise provided herein) license to use the Web Apps or Mobile App, as applicable, for your personal or internal business purposes (the "**Apps License**").

51 3.3 Reserved.

3.4. Modifications. If, during the Term, Meraki integrates any Modifications into the Firmware, Hosted Software, or Web Apps, each such Modification and all related Documentation, will be deemed to be part of the Firmware, Hosted Software, or Web Apps

and made available to the Government only under the terms of the applicable Firmware License, Hosted Software License, or Apps License.

3.5. License to Customer Content. You hereby grant us a non-sublicensable and non-exclusive license to reproduce, distribute, or use any Customer Content for the duration of the License(s) applicable to the Products you are using in connection with our delivery of the Products and services contemplated by this Agreement. You understand and agree that Meraki may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote Meraki's products and services, provided that such aggregated data would not reasonably be identifiable as originating with or associated with you or any End User.

3.6. Restrictions. In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use or attempt to use the Firmware on third party hardware components; or (v) remove any proprietary notices or labels on the Software.

3.7. Special Terms Regarding Apple. Mobile Apps may be distributed by Meraki via a third party ("**Distributor**"), including Apple, Inc. You acknowledge that this Agreement is entered into solely between you and Meraki. This Agreement is not intended to provide for usage rules for Mobile Apps that are less restrictive than the Usage Rules set forth for Licensed Applications in, or that otherwise conflict with, the App Store Terms of Service as of the date that you accept the App Store Terms of Service (which you acknowledge you have had the opportunity to review).

52 ARTICLE 4 HARDWARE

4.1. Use. The specifications for any Hardware you have purchased are set forth on the relevant Meraki data sheets (which can be found on <http://meraki.cisco.com>) (the "**Specifications**"). You will use the Hardware only in accordance with the Specifications and subject to the terms of this Agreement, including this ARTICLE 4.

4.2. Restrictions. You will not, and will not permit others to, whether directly or indirectly: (i) disassemble or attempt to reverse engineer the Hardware; (ii) remove or erase the Firmware from the Hardware, or otherwise try to disable or alter the Firmware functionality; (iii) load any other software onto the Hardware; (iv), make any alterations, updates, enhancements, additions or improvements to the Hardware without the prior written approval of Meraki; or (v) remove any logo, trademark, or service mark of Meraki from any item of Hardware. Any alterations, updates, enhancements, additions, or improvements so approved will be the sole property of Meraki. If any alterations, updates, enhancements, additions or improvements interfere with the normal operation, maintenance, or support of the Hardware (including by increasing the cost of maintenance or support or creating a safety hazard), you will promptly remove the same and restore the Hardware to its normal condition.

53 ARTICLE 5 OWNERSHIP

5.1. Meraki Property. Except as provided in Section 5.2, below, as between you and Meraki, Meraki owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation, and (ii) all Intellectual Property Rights in the Hardware. Nothing in this Agreement will be construed as transferring or changing our Intellectual Property Rights or interests in the Products in any respect. In addition, we will own any and all right, title, and interest in and to any feedback, suggestions, information, or materials you convey to us will be controlled by applicable provisions of the Copyright Act, 17 U.S.C. § 103 and the FAR clause at 52.227-14 related to the Products in connection with your use of the Products ("**Feedback**"). You hereby assign to Meraki all right, title, and interest in such Feedback and will execute any documents and take any additional actions Meraki deems necessary to evidence, record, or perfect the foregoing assignment.

5.2. Customer Property. Except as provided in Section 3.5, above, as between you and Meraki, you own the Customer Content and all Intellectual Property Rights therein. Nothing in this Agreement will be construed as transferring or changing your ownership rights or interests in the Customer Content in any respect.

5.3. Reservation of Rights. Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Products and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Products, whether available now or developed in the future.

5.4. Privacy and Data Collection. Our Privacy Policy hereby incorporated into this Agreement as Attachment 3. Please read the Privacy Policy carefully for information relating to our collection, use, and disclosure of personal information. We collect Traffic Information and may from time to time make available functionality that allows the Government to limit or restrict the types of Traffic Information we collect. Additionally, for devices with Agent Software installed, we transmit certain geolocation information about those devices and the networks on which they are running to Google Inc. ("**Google**"), which provides us with related geolocation information that we store and make available to network administrators as described in our Privacy Policy. Google's Privacy Policy, and not Meraki's, governs Google's handling of the information that we provide to Google. We use Traffic Information to make data available to you regarding, and to allow you to exercise certain controls with respect to, the traffic on your Network. We use Systems Manager Data to provide support and conduct product development activities. You represent and warrant to us that you have obtained or will obtain valid consent from each End User to add that End User's device to the Network, to permit you and Meraki to collect, use, and disclose Traffic Information as described in this Section 5.4, and, to the extent you use Systems Manager, to use Systems Manager as described above (including, without limitation, accessing and deleting files on devices) and to permit you and Meraki to collect, use, and disclose Systems Manager Data as described in this Section 5.4. You hereby consent to our collection, use, and disclosure of Traffic Information and, to the extent you use Systems Manager, to our use of the Device Management Functionality and its collection, use, and disclosure of Systems Manager Data, in each case as described in this Section 5.4.

5.5. Publicity. Neither we, nor you, will use the other's name, trademark, or trade name without the prior written consent of the other party.

54 ARTICLE 6 TERM AND TERMINATION

6.1. Term. This Agreement will be effective with respect to your use of the Products until the expiration of the License(s) applicable to the Products you are using, unless earlier terminated under the FAR. To the extent that you purchase additional Hosted Software License(s) subsequent to the date of the first Order, the duration of each Hosted Software License you have purchased will be adjusted such that all of your Hosted Software Licenses terminate on the same date. The new co-termination date is calculated as a function of (i) the remaining time on your existing Hosted Software License(s) at the time of purchase, (ii) the duration of the Hosted Software License(s) purchased, and (iii) the one-year list price of each such Hosted Software License. This function produces a time value attributable to each Hosted Software License purchased that, when added together with the time value attributable to all new Hosted Software Licenses in a given purchase, yields what we call the "Incremental Dollar Days" associated with the new purchase. In addition, based on the one-year list price of all Hosted Software Licenses in your Network and the number of each type of Hosted Software License purchased, we determine the amount of Hosted Software License value that your Network consumes each day, what we call the "Daily License Usage Rate." By dividing the Incremental Dollar Days by the Daily License Usage Rate, and adding the resulting number of days to the remaining time on your existing Hosted Software Licenses we arrive at the adjusted co-termination date following any new purchase. For further information regarding our licensing and co-termination policies please visit <http://meraki.cisco.com/support/#policies:licensing>.

6.2. Termination. Termination may only be effected by the procedures set forth in the FAR.

6.3. Effect of Termination. Upon the termination of this Agreement for any reason, your access to and right to use the Products will terminate, and all Licenses will terminate. Upon expiration of a Hosted Software License, your Apps License will survive and you may continue to access and use the Web Apps and Mobile Apps, subject to the terms and conditions of this Agreement. Upon termination of this Agreement, each party will return (or destroy) any Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

55 ARTICLE 7 MERAKI WARRANTIES

7.1. Service Warranties. Meraki will make reasonable efforts to provide the Hosted Software and Web Apps available in accordance with the service level warranty set forth in the Service Level Agreement included as Attachment 1 (the "**Service Level Warranty**"). The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to the subject matter of the Service Level Agreement, and our sole and exclusive liability, in contract, tort, or otherwise, for any breach of the Service Level Warranty.

7.2. Hardware Warranties. We represent and warrant to you, the entity who obtained the Hardware from Meraki or its authorized reseller, but not to any End Users or other third parties, as follows: (i) for the Warranty Period, the Hardware will be free from material defects in materials and workmanship; (ii) all items of Hardware are new or refurbished unless otherwise indicated on the face of the Order; and (iii) we have good title to the Hardware, free and clear of any liens, claims, or encumbrances. Hardware not meeting the warranties set forth above will be, at our option, (a) repaired, (b) replaced, or (c) Meraki will refund to you the depreciated amount of the Purchase Price allocable to the defective Hardware, calculated on a straight-line, five-year basis. All Hardware repaired or replaced under warranty will be warranted for the remainder of the Warranty Period. For any return permitted under Meraki's return policy as provided in Attachment 4, you will request a Return Materials Authorization ("**RMA**") number in writing with the reasons for the return request. The remedies described above are our sole liability and your sole remedy for any breach of the warranties contained in this Section 7.2. Meraki is not responsible for any Customer Content or any other non-Meraki data or information stored on any Hardware returned to Meraki for repair, whether under warranty or not.

56 ARTICLE 8 MISCELLANEOUS

8.1. Integration. This Agreement, the EULA, the Order, and the Service Level Agreement (collectively, the "**Governing Documents**") constitute the entire agreement between Meraki and Customer with respect to the subject matter of the Governing Documents and supersede all prior agreements, understandings, and arrangements, oral or written, between Meraki and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter of the Governing Documents have been made either by Meraki or Customer which is not expressly set forth in the Governing Documents. If there is a conflict between the terms of this Agreement and the EULA, the terms of this Agreement will apply.

8.2. Force Majeure. Neither you nor Meraki will be liable under this Agreement by reason of any failure or delay in the performance of its obligations on account of strikes (other than strikes of a party's own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party's own employees), earthquakes, material shortages or any other causes that are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

57 8.3 Reserved.

8.4. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein.

8.5. Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C. § 6305, and approval procedures set forth at FAR 42.1204. Any attempted assignment in violation of this Section 8.5 will be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

IMPORTANT: READ CAREFULLY

**Dear Customer,
Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by the GSA Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE: Cisco Network Active Abstraction

Additional Licensing Instructions:

Client Licensing: To activate additional users for the licenses purchased please contact your Cisco Account Manager or Sales Representative or send email to ask-ana-licensing@cisco.com with the requested information below:

1. GSA Customer Purchase Order
2. Your Contact Information
3. Your Cisco Sales Representative Name

NOTE: This alias is used only for license activation. For any questions or support issues, contact your Cisco Account Manager or representative.

Installation and Use

This license strictly prohibits Customer and any user from utilizing this Software for more than a single Customer network management environment. Reproduction and Distribution Customer may not reproduce nor distribute software

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

Please refer to the attached Cisco Systems, Inc. End User License Agreement

Cloud and Systems Management	Cisco Cloud Portal	DOC-67346
Cloud and Systems Management	Cisco Workplace Portal	DOC-67346

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, you agrees to comply at all times with the terms and conditions provided in this SEULA This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for employees, agents, consultants and/or independent contractors of the Government.

Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.

Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the licensee. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with the licensed components listed below: Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.

Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud.

If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters are restricted to use with Cisco Cloud Portal.

IMPORTANT: READ CAREFULLY**Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

1. ADDITIONAL LICENSE RESTRICTIONS**Software Upgrades, Major and Minor Releases**

Cisco may provide Cisco Configuration Engine software updates. The software update and new version releases can be purchased through Cisco or a recognized partner or reseller.

The customer should purchase one software update for each Configuration Engine installation. If the customer is eligible to receive the software update or new version release through a Cisco extended service program, the customer should request to receive only one software update or new version release per valid service contract. Reproduction and Distribution. Customer may not reproduce nor distribute software.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

Please refer to the attached Cisco Systems, Inc. End User License Agreement.

IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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Product Name

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license

L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license

R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license

R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

Connected Grid Network Management System (CG NMS) License

This license entitles the user to specific Cisco CG NMS product features for specific time duration. The specific Cisco CG NMS product features and the time duration are detailed as follows:

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license

L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license

R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license

R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

The user is entitled to receive updates as made available during the term of the license, provided that the user holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting CG NMS products.

Cloud and Systems Management	Cisco Intelligent Automation for Cloud	DOC-68556
Cloud and Systems Management	Cisco Intelligent Automation for Compute	DOC-68556
Cloud and Systems Management	Cisco Intelligent Automation for SAP	DOC-68556
Cloud and Systems Management	Cisco Process Orchestrator	DOC-68556
Cloud and Systems Management	Cisco Server Provisioner	DOC-68556
Cloud and Systems Management	Cisco Tidal Enterprise Scheduler	DOC-68556
Cloud and Systems Management	Cisco Tidal Performance Analyzer	DOC-68556

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END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS:

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler
Cisco Process Orchestrator
Tidal Performance Analyzer
Cisco Intelligent Automation for Compute
Cisco Intelligent Automation for Cloud
Cisco Intelligent Automation For Cloud Starter Edition
Cisco Server Provisioner
Cisco Intelligent Automation for SAP Definitions

For purposes of this Supplement, the following defined terms will apply:

Designated System shall mean the designated platform for which Customer originally licenses the Software from Cisco for installation and use. Such designated platform may include for instance, but is not limited to, a designation of the specific number of CPUs or system description or name as approved by Cisco. Movement and Usage Fees shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System. Total Deployment Size shall mean the designated configuration for which The Cisco Intelligent Automation For Cloud Starter Edition Solution's total deployment size cannot exceed 160 blades collectively across a customer s installation. -Other Terms and Conditions. Movement and Usage. With respect to the license granted to Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing prior written notice to obtain updated keys, and additional fees may apply. A fee schedule is available upon Customer s written request to Cisco. License. For the avoidance of doubt, the license granted to Customer for the Software in the license section shall be perpetual if designated as such by Cisco at time of Order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above. Total Deployment Size. For avoidance of doubt, no customer shall deploy the Cisco Intelligent Automation for Cloud Starter Edition Solution in a configuration that exceeds 160 blades in total deployment size across the ir enterprise.

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In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by the Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity

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SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS SOFTWARE

IMPORTANT READ CAREFULLY: This Supplemental End User License Agreement (SEULA) contains additional terms and conditions for the Software licensed under the End User License Agreement (EULA) between the Government and Cisco (collectively, the Agreement). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

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ADDITIONAL LICENSE RESTRICTIONS

Device Restricted Versions: The Customer may install and run the Software on a single server to manage up to the cumulative device count specified in the Right To Use statement located on the Claim Certificate received as part of the software package. When used anywhere in this SEULA, a "device" means any device in the Customer's network environment which has its own IP address. Please refer to this guide for further device definition. Customers whose requirements exceed the license limit of devices must purchase additional incremental licenses. Device restrictions are enforced by license registration and through serial key installation. Limitations associated with the maximum number of devices that the application can support per server is specified below. The licensed device limit will always override the maximum number of devices supported per server unless the customer has purchased and registered the 5,000 or the 10,000 device license offering.

Installation and Use

The Software components are provided to Customer solely to install, update, supplement, or replace existing functionality of the applicable Network Management Software product. Some license terms, such as device count and proof of preexisting licenses may be electronically enforced. Customer may install and use the following Software components: Cisco Prime LAN Management Solution (Cisco Prime LMS): May be installed on one (1) server in Customer's network management environment. Installing the Software and applying a single serial license key to two (2) servers are supported in the 5,000 and 10,000 device restricted versions, but the cumulative total number of devices supported cannot exceed 5,000 and 10,000 respectively per serial license key. When two servers are used to host Cisco Prime LMS, each server should have a copy of the original license key installed on it. Customers should not modify the license file.

Additional Information for 5,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 5,000 device restricted licensing may require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 5,000 device restricted version of the

Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

Additional Information for 10,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 10,000 device restricted licensing often require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided that the customer has purchased and registered the 10,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 10,000 per serial license key. Device support beyond 10,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

Additional Information for RHEL

RHEL distribution that comes along with Cisco Prime LMS 4.2 is solely intended for use by Cisco Prime LMS application alone and customers may not use this for other purposes.

Reproduction and Distribution

Customer may not reproduce nor distribute software except to make copies to authorized employees, agents, and contractors for backup purposes only.

DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

Please refer to the attached Cisco Systems, Inc. Software License Agreement

[Cisco Prime Central](#)

[DOC-58855](#)

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SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE:

CISCO PRIME CENTRAL

IMPORTANT-READ CAREFULLY: This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

Cisco Prime Central requires a license to connect to and/or interoperate with other Cisco and third party systems or components, and is further subject to the limitations set forth below. Please see the Additional Information section of this document for any licenses which are included with your specific product purchase. If your requirements exceed the scope of any license expressly included with your product, you must purchase additional licenses from Cisco pursuant to a newly executed GSA Customer Purchase Order.

The following restrictions apply:

- Cisco Prime Central Tier 1 and Tier 2 Gateway may not be used to connect Cisco Prime Central to third party systems, such as third party trouble ticketing systems, except as expressly set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central Tier 1 and Tier 3 Data Service Adapter instances may only be used to connect to other Cisco applications or components embedded within Cisco applications, and in addition, only if expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with an OSS system(s) using MTOSI interface except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with Cisco Domain Manager(s) except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

Rights Included for Cisco Prime Central MTOSI License

Cisco Prime Central MTOSI license includes the right to use one (1) MTOSI instance to integrate Cisco Prime Central to an OSS system using the MTOSI interface.

Reproduction and Distribution

Customer may not reproduce nor distribute software. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS Please refer to the Cisco Systems, Inc. Software License Agreement.

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If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for the employees, agents, consultants and/or independent contractors. . Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you have licensed Cisco Cloud Portal, the following additional terms apply: Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring. Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the customer. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with licensed components listed below:

Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.

Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters restricted to use with Cisco Cloud Portal.

IMPORTANT: READ CAREFULLY**Dear Customer,****Supplemental End User License Agreement**

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END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS IMPORTANT: READ CAREFULLY
Software

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler
Tidal Horizon
Tidal Intelligent Automation
Tidal Enterprise Orchestrator
Tidal Intersperse
Tidal Performance Analyzer
Tidal Transaction Analyzer
Tidal Intelligent Reporting
Tidal Enterprise Reporter
Cisco Intelligent Automation Cloud Automation
Definitions

For purposes of this Supplement, the following defined terms will apply:

"Designated System" shall mean the designated platform for which Customer originally licensed the Software from Cisco for installation and use. Such designated platform may include, but is not limited to, a designation of the specific number of CPUs or system descriptions or names as approved by Cisco.

"Movement and Usage Fees" shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.

"NFR" means not for resale, to be used for nonproduction, demonstration use only.

Other Terms and Conditions

"Movement and Usage". With respect to the license granted to the Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing Cisco with prior written notice to obtain updated keys, and pursuant to a new GSA Customer Purchase Order. Additional fees may apply. A fee schedule is available upon Customer's written request to Cisco.

"License". The license granted to the Software in the license section shall be perpetual if designated as such by Cisco at time of Customer order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.

"NFR Software". With respect to the License granted in the Agreement as to the use of any Software sold to Customer as NFR Software, the purchase of such Software is subject to the following additional restrictions:

1. NFR purchases are available to all Cisco registered partners (categories include Select, Premier, Silver and Gold level partners). Cisco authorized training partners may also participate, but use is limited to instructional purposes only. Cisco has the sole discretion to define a registered partner and status.
2. Purchase limit is one NFR kit per operational installation for demonstration, proof of concept or internal nonproduction use.
3. Software cannot be resold, traded, copied, transferred, sublicensed, or used in any manner other than as NFR

Cloud and Systems Management	Cisco Unified Provisioning Manager	DOC-21311
Cloud and Systems Management	Cisco Unified Operations Manager	DOC-21311
Cloud and Systems Management	Cisco Unified Service Monitor	DOC-21311
Cloud and Systems Management	Cisco Unified Service Statistics Manager	DOC-21311

IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

(This section shall replace the "License" section in the EULA)

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for the purpose of delivering Managed Services, the Software and the Documentation for which Customer has paid the required license fees. "Managed Services" means the performance by Customer of providing services for third parties (Subscribers) which will require communicating with and managing Cisco equipment not owned or leased by the Customer. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software that Cisco makes available with the Software in any manner (including on CD Rom, or on line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card. Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation or the applicable Supplemental License Agreement permits installation on non Cisco equipment) for communication with Cisco equipment not owned or leased by Customer in connection with Customer's provision of Managed Services to Subscriber. No other licenses are granted by implication, estoppel or otherwise. Upon termination of Managed Services to Subscriber, Customer is required to remove all deployed Software deployed by Customer to Subscriber's network and servers.

Customer's license to use the Software is contingent upon Customer deploying or otherwise making available the Software and any Documentation in compliance with and subject to the Software Subscriber License Responsibilities listed below.

Software Subscriber License Responsibilities

The following license terms and responsibilities, substantially as stated here, will be accepted and agreed to, in writing or as otherwise provided in the EULA, by the Subscribers of Managed Services:

Subscriber agrees to be bound by the following terms and conditions. In the absence of a signed agreement, use of the Software by Subscriber or by Customer on Subscriber's behalf, or receipt by Subscriber of any direct or indirect benefit derived therefrom, shall constitute acceptance by Subscriber of the following terms:

1. Subscriber is granted a limited license from Cisco and its suppliers and licensors to use the Software solely in connection with the Managed Services and to the extent such Software is deployed by Customer on Subscriber's network or servers. 2. Upon termination of services to Subscriber, Customer is required to remove, and cooperate with Customer's efforts to remove, all deployed Software from the Subscriber's network and servers.
3. Subscriber may use the Software only in connection with the receipt of Managed Services from Customer, and for the purposes described in the Software's supporting Documentation if any.
4. Subscribers may only use the Software pursuant to these terms and Customer's license with Cisco and its suppliers and licensors, and Subscriber agrees to be governed by such terms and license including without limitation, the General Terms Applicable to the Limited Warranty Statement and End User License Agreement;

5. Subscriber may receive, or have deployed on its network or servers, updates, patches, error corrections or new or modified versions of the Software (collectively referred to as "Releases") from time to time. Releases are deemed part of the Software subject to the terms herein and the license with Cisco and its suppliers and licensors.
6. Subscribers acknowledge that all right, title and interest in and to the Software, the ideas and expressions contained therein, all updates and enhancements, all physical forms, regardless of where resident, whether permanent or transient, including authorized and unauthorized copies, any and all modifications made by Cisco, its suppliers and licensors, the software's supporting documentation, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating to the above are, and shall remain with Cisco and its suppliers and licensors. Subscriber is granted only a limited right of use as set forth herein;.
7. Subscribers will not distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Software, including but not limited to the code and the software's supporting documentation in any form except as directed by Customer in support of the delivery of Managed Services:.
8. Subscribers will not place any portion of the Software into the public domain; And,
9. Subscribers will not copy, alter, translate, decompile, disassemble, reverse engineer or create derivative works of the Software, except that the Subscriber may make copies as required for the authorized use of the Software, may make copies of the supporting documentation as needed, and may make one additional copy of the Software for back up or archival purposes.

Collaboration

Cisco Magento Managed Services

[DOC](#)

SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT FOR CISCO SYSTEMS' MAGENTO MANAGED SERVICES ("MAGENTO SERVICES") AND MAGENTO SOFTWARE ("MAGENTO SOFTWARE").

IMPORTANT—READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT ("SLSA") CONTAINS ADDITIONAL LIMITATIONS RELATING TO THE MAGENTO SERVICES AND MAGENTO SOFTWARE PROVIDED TO CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLSA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLSA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE MAGENTO SERVICES OR MAGENTO SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLSA SHALL TAKE PRECEDENCE.

CUSTOMER'S RIGHT TO USE THE MAGENTO SERVICES IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE MAGENTO SERVICES PURCHASED BY CUSTOMER PURSUANT TO A VALID PURCHASE ORDER. CUSTOMER MAY USE THE MAGENTO SERVICES ONLY DURING THE PERIOD FOR WHICH SERVICES WERE PURCHASED BY CUSTOMER UNDER

THE APPLICABLE SKU PURSUANT TO A VALID PURCHASE ORDER. ALL OTHER USES ARE STRICTLY

PROHIBITED. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by The Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLSA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity."

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE MAGENTO SERVICES OR MAGENTO SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a limited, nonexclusive, non-transferable, worldwide license to access and use the Magento Services and the Documentation to provide the Network Services its customers, subject to the production server and development server limitations set forth in the Purchase Order. The foregoing license does not transfer or convey to Customer or any third party any right, title or interest in or to Magento Services, the Magento Software or Documentation or any associated intellectual property rights, but only a limited right of use revocable in accordance with the terms of the Agreement.

Restricted Use. Customer is purchasing the rights to access and use the then-current version of the Magento Software; Customer's license specifically excludes any subsequent Major Releases of the Magento Software. No other updates, upgrades, or other Magento Software releases are licensed by Cisco to Customer hereunder.

Major Release means a release of Magento Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Magento Software version number [(x).x.x]. Cisco does not warrant Major Releases will be compatible with prior software releases. Minor Release means an incremental release of Magento Software that provides maintenance fixes and additional Magento Software functions. Cisco designates Minor releases as a change in the tenths digit of the Magento Software version number [x.(x).x].

CUSTOMER RESPONSIBILITIES

(a) In performing the Magento Services, Cisco may instruct the Customer to perform certain tasks or checks relating to Customer's network. Customer will, at its expense, perform all such checks and tests. Customer will also provide Cisco, or its authorized representative, reasonable access, at no cost to Cisco, to Customer's networking equipment in connection with the Magento Services. Customer shall not be required to furnish specialized equipment or know-how. Any rework or

additional work resulting from modification of the Magento Services requested by Customer (and accepted by Cisco) or any act or omission of Customer, including providing inaccurate information to Cisco will only occur pursuant to the parties executing a new Purchase Order. (b) Customer is responsible for obtaining all approvals required by any third parties in order for Cisco to perform any Magento Service under this Agreement. Cisco will not be responsible or otherwise liable for any failure to perform the Magento Services to the extent caused by Customer's failure to obtain such third party approvals or if any third party otherwise prevents Cisco from performing the Magento Services.

- (c) Customer will not resell the Magento Software or Magento Services or create or offer derivative versions of the Magento Software or Magento Services, either directly or indirectly through a third party.
- (d) Customer will be responsible for its compliance with all privacy, data control or use laws and regulations relating to its use of the Magento Services, including without limitation any data contained in any reports provided by Cisco hereunder. Customer acknowledges the potential privacy and other issues associated with the collection and use of such data. Customer warrants and covenants that it will comply with all laws (including, without limitation, copyright laws, privacy laws and import and export laws) applicable to Customer or its use of the Magento Services. In addition, Customer is responsible for obtaining any permits or approvals relating to its use of the Magento Services, including without limitation any permits or approvals relating to transactions requiring its customer's credit card information or other personally identifiable information.
- (e) Customer will not use the Magento Services to send spam, viruses or malware.
- (f) Customer understands the Magento Services are hosted by Cisco via a network utilized by Customer and other Cisco customers; Customer will not intentionally or unintentionally access data not owned by Customer or otherwise related to Customer's use of the Magento Services, or log into, or attempt to log into, a server or account which Customer is not authorized to access.
- (g) Customer will not attempt to probe, scan or test the vulnerability of a system or breach security or authentication measures without proper authorization.
- (h) Customer will be responsible for handling all communication, technical support to and business relations with its customers, including without limitation responding to inquiries and technical questions.
- (i) Customer will be responsible for determining whether or not any reported defects or issues may be replicated and that they are isolated to the Magento Services or Magento Software.
- (j) Customer is responsible for any catastrophic security events that result from any unauthorized configuration of the Magento Service components by Customer's personnel.

The failure of Customer to comply with Customer's responsibilities set forth above may be deemed a material breach of. Any termination shall be in accordance with FAR 12.302(b) and 52.233-1.

Customer Warranties. Customer represents, warrants and covenants that (i) it shall only use the Magento Services and Magento Software to provide Magento Services to its End Users only as permitted by any Capacity limitations set forth in the Purchase Order. If Customer wishes to utilize the Magento Software beyond the Capacity set forth in the Purchase Order, Customer shall be obligated to place a new Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content. Customer is and shall be solely responsible for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Magento Services, or otherwise provided to Cisco in any medium or transmitted or routed using the Magento Services ("Customer Content"). Customer owns all right, title, and interest in the Customer Content, or possesses or shall possess all legally valid rights in the Customer Content necessary for the uses of the Customer Content contemplated herein. Customer shall not transmit or route to Cisco or the Magento Services, or otherwise direct via the Magento Services, any Customer Content that (a) infringes any copyright, trade secret, or other intellectual property right, (b) contains libelous, defamatory, or obscene material under any applicable law, or (c) otherwise violates any federal laws or regulations relating to content or content distribution. Customer shall be responsible for utilizing Magento Services in accordance with the Documentation. If Customer has actual knowledge that any Customer Content infringes the intellectual property or other rights of a third party or violates any applicable federal laws or regulations (including, without limitation, laws and regulations relating to indecency or obscenity), Customer shall remove such Customer Content from Customer's origin server. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its services to meet Customer's purposes and objectives. During the Term, Customer grants to Cisco a limited, non-exclusive license to use the Customer Content solely for Cisco to perform the Magento Services as contemplated hereunder. In the case where at no material fault of Cisco, the Magento Services or Magento Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, Customer continues to allow its content to be accessed with any software or services operated in conjunction with the Magento Services or Magento Software during the period where there is no fix for such DRM security breach, or Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then Customer acknowledges and agrees Cisco will not have any liability to Customer for any costs, damages or legal fees related to a DRM security breach. Neither this SLA nor any rights or obligations under this SLA shall be assigned by a party without the other's prior written consent, in accordance with the provisions of the Anti-Assignment Act 41 USC 6305 and FAR 42.1204.

ADDITIONAL SERVICES

During the period Customer has purchased Magento Services, Cisco's Software Application Support (SAS) service obligations are provided in Attachment 5. Customer is not eligible to receive Software Application Support Plus Upgrades (SASU) services, if any, included on such URL. Professional Services relating to the Magento Services or Magento Software purchased by Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed upon by the parties.

Cisco UC Virtualization Hypervisor and Cisco UC
Collaboration
Virtualization Foundation

[DOC](#)

IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product that is used with Cisco's Unified Communications products, including features, functionality and solutions enabled in such Software (collectively, "Software Product") licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined, will have the meaning assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government's access and use of the Software Product, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

"Cisco UC Product" means the following products:

Call Processing and System Management Applications

Cisco Unified Communications Manager
Cisco Unified Communications Manager

— IM & Presence

Cisco Unified Communications Manager

— Basic Paging Server

Cisco Unified Communications Manager

— Session Manager Edition

Cisco Emergency Responder

Cisco Unified Attendant Consoles

Cisco Unified Communications

Management Suite (including
Operations Manager, Service Manager,
Service Statistics Monitor and
Provisioning Manager)

Cisco Prime Collaboration Suite

Cisco Survivable Remote Site

Telephony Manager

Cisco InterCompany Media Engine

Messaging and Presence Applications

Cisco Unity

Cisco Unity Connection

Cisco Unified Presence

Contact Center Applications

Cisco Unified Contact Center Express

(including Work Force Management,
Work Force Optimization, Quality
Management, Compliance Recording)
Cisco Unified IP IVR
Cisco Unified Contact Center Enterprise
(including Packaged Contact Center
Enterprise and Email/Web Interaction
Manager)
Cisco Unified Intelligence Center
Cisco Unified Contact Center
Management Portal
Cisco Unified Customer Voice Portal
Cisco MediaSense
Cisco SocialMiner
Cisco Remote Expert Solution
(including Remote Expert Manager and
Interactive Experience Manager)

**Conferencing, Collaboration and
Social**

Cisco Webex
Cisco Unified MeetingPlace
Cisco TelePresence and Tandberg suites
Cisco Video Communications Server
Cisco Quad

Additionally, any bundled solutions including the applications listed above, including without limitation, Cisco Unified Communications Manager Business Edition 6000, are also licensed to run with the virtual machines.

"Software Product" includes the following two products: Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation.

In addition to the Agreement, the following supplemental terms apply:

1. You may use the VMware Products solely to operate and run in conjunction with the applicable CISCO UC Product or approved third party applications; they cannot be used in any manner independently from the CISCO UC Product or such third party applications. For purposes of this SEULA, "Approved Third Party Applications" include applications from Vendors enrolled in the "Collaboration" or "Complementary to Collaboration" categories within Cisco Solutions Plus or Cisco Developer Network Programs that are not listed in the Cisco Business Edition 6000 Co-residency Policy Document available at: http://www.cisco.com/en/US/products/ps11369/prod_white_papers_list.html All use shall terminate and cease when the use of the Cisco UC Product or Approved Third Party Applications terminates.

IMPORTANT: READ CAREFULLY

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Supplemental End User License Agreement**

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SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT ("EULA") FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(3)
NOT FOR RESALE

This package contains a bundle of Cisco Unified Communications products (the "Cisco UC NFR Bundle") made available under these terms only to qualified Cisco resellers and channel partners. In addition to the EULA terms set forth in Attachment 8 and any other Supplemental End User License Agreement ("SEULA") terms (collectively, the EULA and the SEULA terms are referred to as the "Software Agreement") accompanying or otherwise applicable to the software products enclosed (the "Software"), the following additional supplemental SEULA terms apply to the Software and are hereby incorporated as part of the Software Agreement: The Cisco UC NFR Bundle Software is provided to you as a Cisco reseller or channel partner for your internal demonstration and testing purposes only. The Cisco UC NFR offering may only be used in internal lab or demonstration environments by the acquiring reseller or partner. The Software is not intended for and should never be used in production and may not be resold. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software. If a new release of a Software product included with the Cisco UC NFR Bundle is made available by Cisco and/or as a version of the included Software products is announced by Cisco to be at end of life, your license to use for testing and demonstration purposes of that product will terminate. , Components of this Software are "NFR" or not for resale. You agree not to distribute the Software to a third party. The NFR Software does not include support and is not eligible for upgrades.

You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software ("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback.

IMPORTANT: READ CAREFULLY**Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT ("AGREEMENT") FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(2) NOT FOR RESALE

In addition to the Software Agreement, the following supplemental terms ("Supplement") apply to the Software licensed to you and are hereby incorporated as part of the Agreement: The Software is provided for your internal demonstration and testing purposes only. The Software is not intended for and should never be used in production. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software in a production environment. For the avoidance of doubt, components of this Software are NFR or not for resale. At no time does the license herein permit you to distribute the Software to a third party. You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software ("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback. In the event of a conflict between this Supplement and the Agreement, the Supplement shall control.

Collaboration

Cisco Unified Video Conferencing

[DOC-29311](#)

Collaboration

[Cisco Unified Videoconferencing Manager](#)[DOC-29311](#)

TelePresence

Cisco TelePresence Commercial Express

[DOC-29311](#)**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

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Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

"Intra-company Use" is a use of the Software Product which occurs within the same company/entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. "Inter-company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of interconnecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-company Use also includes providing features of the Software Product in a commercially available service offering. "Restricted Features" means one or more of the following features: (i) Inter-company Multipoint encryption; and (ii) Intercompany HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-company Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-COMPANY USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. IF YOU WERE TO USE THE RESTRICTED FEATURES FOR INTER-COMPANY USE, YOUR USE OF THE RESTRICTED FEATURES PRIOR TO SUCH AUTHORIZATION WOULD CONSTITUTE A BREACH OF THE AGREEMENT. Unless your use is through an Authorized Service Provider, you are not authorized to use the Restricted Features for Inter-company Use until the Restricted Features have been noted as a generally available feature set in the updated release notes for the Software Product, as posted by Cisco on cisco.com. Notwithstanding the foregoing, your Intra-company Use of the Restricted Features shall not be restricted by this paragraph.
2. The CTS-Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-company Use. The CTS-Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS-Manager per tenant.
3. The Commercial Express product contains software provided by VMware, Inc. or its affiliates, and use of VMware software is subject to the terms of the VMware ESX/ESXi End User License Agreement Attachment 10.

IMPORTANT: READ CAREFULLY**Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions

CPU means a central processing unit that encompasses part of a Server.

Evaluation Term means a sixty-day period during which the Software may be used solely for trial or evaluation purposes, free of additional charge.

Instance means a single copy of the Software. Each copy of the Software loaded into memory constitutes a single Instance.

License Term means the period of time during which you are authorized to use the Software to deliver information technology services to your internal or external customers. The License Term varies depending on the license fee paid.

Server means a single physical computer or device on a network that manages or provides network resources for multiple users. Each Server must meet or exceed the following CPU requirements: Intel Nehalem, AMD Barcelona and a clock frequency of 1.8GHz.

Software means the CSR 1000V, successor versions, or other virtual software products that Cisco determines shall be governed under this SEULA. To run, the Software requires VMWare ESXi version 5.0 or higher.

Term means the License Term and any Evaluation Term.

Virtual Machine means a software container that can run its own operating system and execute applications like a Server. Service

Provider means a company that provides information technology services to external end user customers.

Additional License Terms and Conditions

1. Cisco hereby grants You the right to install and use a single Instance of the Software during the Term. Upon expiration of the License Term, an Evaluation Term commences unless and until You renew the License Term by payment of the required license fees. Following expiration of the Evaluation Term, the Software communication interfaces shut down until all functionality ceases.
 2. The Software may be deployed on a Server in a Virtual Machine. Each unique Instance of the Software requires payment of the applicable license fees. You may not run multiple Instances of the Software without payment of the applicable license fees.
 3. Subject to the terms and conditions herein and payment of applicable license fees, You may use the Software as a Service Provider or to deliver hosted information technology services to your employees, agents, consultants and/or independent contractors., or to employees and contractors of your affiliated companies.
- Description of Other Rights and Obligations. Please refer to the Cisco Systems, Inc. End User License Agreement.

Cisco End User License Agreement, AnyConnect Secure Mobility Client, Release 3.0

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. CISCO SYSTEMS, INC. OR ITS SUBSIDIARY LICENSING THE SOFTWARE INSTEAD OF CISCO SYSTEMS, INC. ("CISCO") IS WILLING TO LICENSE ITS SOFTWARE TO YOU, ("GSA CUSTOMER") ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT (COLLECTIVELY THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY.

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THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S ACCESS AND USE OF EACH CISCO OR CISCO-SUPPLIED SOFTWARE ("SOFTWARE").

License

Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-ROM, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable Purchase Order which has been accepted by Cisco and for which Customer has paid to Cisco the license fee as required by the "GSA Customer Purchase Order".

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal purposes. No other licenses are granted by implication, estoppel or otherwise. For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

General Limitations

This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the Agreement, Customer shall have no right, and Customer specifically agrees not to:

- (i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- (iv) publish any results of benchmark tests run on the Software;
- (v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or
- (vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

Software, Upgrades and Additional Copies

For purposes of the Agreement, "Software" shall include (and the terms and conditions of the Agreement shall apply to) computer programs, including firmware, as provided to Customer by Cisco or an authorized Cisco reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of any of the foregoing. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY. NOTHING CONTAINED HEREIN SHALL RESTRICT THE CUSTOMER'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

Proprietary Notices

Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco. NOTHING CONTAINED HEREIN SHALL RESTRICT THE GOVERNMENT'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

Term and Termination

The Agreement and the license granted herein shall remain effective until terminated. The parties may terminate the Agreement only in accordance with the procedures set forth in the FAR. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

Government Records

Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement as long as Cisco complies with Customer's security requirements. In the event such audit discloses non-compliance with this Agreement, the parties shall negotiate a new GSA Customer Purchase Order to bring the Customer into compliance.

Export, Re-Export, Transfer and Use Controls

The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.) and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with export, re-export, transfer and use may be located at the following URL: http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html and is provided for informational purposes only.

U.S. Government End User Purchasers

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. The Government agrees that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and accepts the rights and restrictions herein.

Limited Warranty

Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Cisco or the party supplying the Software to Customer, if different than Cisco, within the warranty period. Cisco or the party supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions

This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; or (f) any Software for which Cisco does not receive a license fee.

Disclaimer OF Warranty

EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CISCO, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Cisco's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

General Terms Applicable to the Limited Warranty Statement, End User License Agreement, and Supplemental License Agreement

Controlling Law, Jurisdiction

If you acquired the Software in the United States, the Agreement and Hardware and Software warranties ("Warranties") are controlled by and construed under the Federal laws of the United States of America, notwithstanding any conflicts of law provisions. For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods.

If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Supplemental End User License Agreement for Cisco Systems AnyConnect Secure Mobility and other SSL VPN-related Client Software

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between You ("You" as used herein means ("GSA Customer"). and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For purposes of this SEULA, the Product name and the Product description You have ordered is any of the following ("Software"):

- Cisco AnyConnect Secure Mobility Client
- Cisco AnyConnect VPN Client
- Cisco AnyConnect Profile Editor
- Cisco AnyConnect Host Scan (HostScan)
- Cisco AnyConnect Diagnostics and Reporting Tool (DART)
- Cisco SSL VPN Client
- Cisco VPN Client
- Cisco Secure Desktop
- Smart Tunnels
- Port Forwarding
- Additional SSL VPN delivered applets

Definitions

For purposes of this SEULA, the following definitions apply:

"Endpoint" means a computer, smartphone or other mobile device used in conjunction with any of the Software. "Network Access Manager Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with IEEE 802.1X authentication functionality to manage wired and wireless network connections.

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an Endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

"Telemetry Module" means a separate module in the Cisco AnyConnect Secure Mobility Client to provide Personal Information and Non-personal Information from Endpoint devices to Cisco's web security infrastructure.

"Web Security Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with functionality that redirects web traffic to the Cisco ScanSafe hosted web security infrastructure, for customers that have subscribed to Secure Mobility for ScanSafe and used in conjunction with Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security services.

Additional License Terms and Conditions

1. Installation and Use on Unlimited Number of Endpoint Devices

Cisco hereby grants You the right to install and use any of the Software listed above in this SEULA on an unlimited number of Endpoint devices, provided that, except with respect to the Network Access Manager Module as described in Section 2 below, each of those Endpoint devices must use the Software only to connect to Cisco equipment. These license grants are subject to export restrictions in the EULA and to the network equipment license restrictions in Section 3 below. You may make one copy of the Software for each such Endpoint device and a reasonable number of backup copies for the purpose of installing the Software on that Endpoint device.

2. Cisco AnyConnect Network Access Manager Module

The Network Access Manager Module, as described in the Cisco AnyConnect Secure Mobility Client Administrator Guide, may be used by You in conjunction with non-Cisco wired and wireless equipment for the purpose of connecting to non-Cisco network equipment. Support services (including Technical Assistance or TAC support) are only available if You have an active support contract for Cisco Products used in conjunction with the Network Access Manager Module. Support services will not be provided directly to your end users by Cisco.

3. Cisco Network Equipment and Hosted Service License Entitlements and Restrictions

Your use of the Software or specific features thereof with Cisco network equipment shall be subject to license entitlements and restrictions for the applicable Cisco network equipment or hosted services. Please consult Your administrator guide for the applicable Cisco network equipment or hosted services for the relevant license entitlements and restrictions.

4. Distribution to Third Party Business Partners and Customers

You may copy and distribute the Software to your duly authorized employees, agents, consultants, and/or independent contractors (collectively referred to as “employees”) solely and exclusively for the purposes of accessing your Cisco equipment, provided that You shall remain responsible for compliance with the EULA and this SEULA by such employees. Each such distribution of the Software to a third party must be accompanied by a copy of the EULA and this SEULA.

5. No Support to Third Party Business Partners or Customers

Cisco will not provide end-user support (including Technical Assistance or TAC support) to any third party business partner or customer that receives the Software in accordance with Section 4 hereof. You shall be responsible for providing all support to each such third party.

6. Effect of Termination on Third Party Business Partners or Customers

In the event of termination of the Agreement, If applicable, You must use commercially reasonable efforts to notify the third party business partner or customer to whom You have distributed the Software that their rights of access and use of the Software have also ceased.

7. Data, Information and Privacy

- **Telemetry Module**—If You install the Telemetry Module, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact You, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time either by turning the Telemetry Module off or by uninstalling the Telemetry Module. Configuration and uninstallation instructions for the Telemetry Module are available in Your Cisco AnyConnect Secure Mobility Client Administrator Guide.

- **Web Security Module**—If You agree to this Agreement and install and utilize the Web Security Module to communicate with the Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security Services, You consent to Cisco's collection, use, processing and storage of Personal Information as described below. This Personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. None of this Personal Information will be used to identify or contact You, and use of the Personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information at any time by configuring the Cisco ScanSafe Web Filtering Service to anonymize Your end user data. Configuration instructions for the Cisco ScanSafe Web Filtering Service are available in Your Cisco ScanSafe Web Filtering Service Administrator Guide.

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SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY

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Software shall include Cisco s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer s end users) license to use for Customer s (and/or Customer s end users) internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in the GSA Customer's Purchase Order. The length of the license term (or subscription) shall be as indicated in the GSA Customer's Purchase Order. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Cisco ASA Next Generation Firewall Services

Security

(formerly ASA CX Context-Aware Security) Application

[DOC-2](#)

Visibility & Control

IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

58 Product Name

ASA5585-10-AP1Y ASA 5585-X CX-10 Application Visibility and Control 1Year

59 SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (SEULA) contains additional terms and conditions for the Software licensed under the End User License Agreement (EULA) between you ("GSA Customer") and Cisco (collectively, the Agreement). Capitalized terms used in this SEULA, but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence Software shall include Cisco s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer s end users) license to use for Customer s (and/or Customer s end users) internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in your ordering documents. The length of the license term (or subscription) shall be as indicated in your ordering documents. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Cisco ASA Next Generation Firewall Services

Security

Essentials

(formerly ASA CX Context-Aware Security) Web Security

[DOC-3](#)

IMPORTANT: READ CAREFULLY

Dear Customer,

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used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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Product Name

ASA5585-20-AW3Y ASA 5585-X CX-20 AVC and Web Security Essentials 3Year

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer s end users) license to use for Customer s (and/or Customer s end users) internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in your ordering documents. The length of the license term (or subscription) shall be as indicated in your ordering documents. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco s website to obtain the necessary license key or license file.

Security

Cisco ISE Wireless

[DOC-4](#)

60 IMPORTANT: READ CAREFULLY

61 Dear Customer,

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Product Name

L-ISE-AD5Y-W-100= Cisco ISE 100 Endpoint 5 Year Wireless Subscription License

Identity Services Engine (ISE) Wireless License

The Cisco Identity Services Engine (ISE) Wireless Package License entitles the user to use the Base and Advanced features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Wireless License Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Wireless license allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Additional licenses can be purchased to support more wireless endpoints. The purchased license quantity will be listed in the sales order. The Identity Services Engine Wireless Package License is a 5 year subscription license and subject to the termination provisions stated in the FAR. In order to be able to deploy the ISE across different types of endpoints or access technologies (wired, wireless and vpn), customers have to purchase the Wireless Upgrade license. The Wireless Upgrade license allows for the ISE to be deployed with wired, wireless and vpn endpoints. The pre-requisite for installing the Wireless Upgrade license is having the Wireless license installed on the ISE.

The endpoint count of the Wireless Upgrade license has to be the same as the pre-installed Wireless license.

Support

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option, the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates.

Security

Cisco ISE Wireless Upgrade

[DOC-5](#)

IMPORTANT: READ CAREFULLY

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Product Name

L-ISE-W-UPG-100= ISE 100 Endpoint 5 Year Wireless Upgrade Subscription Lic

Identity Services Engine (ISE) Wireless Upgrade License

The Cisco Identity Services Engine (ISE) Wireless Upgrade License entitles the user to use the Base and Advanced features and services for All Endpoints and not just limited to Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that the GSA Customer holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform. Features and Functionality

The Identity Services Engine Wireless Upgrade License provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Wireless Upgrade license allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine platform. The pre-requisite to install this license is the ISE Wireless License. This license entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Wireless Upgrade License is a subscription license whose term will expire at the same time as the pre-installed Wireless license and is subject to termination provisions stated in the FAR. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates.

Security

Cisco ISE Advance

[DOC-6](#)

IMPORTANT: READ CAREFULLY

Dear Customer,

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Product Name

L-ISE-ADV3Y-50K= Cisco ISE 50000 EndPoint 3Year Advanced Subscription License

Identity Services Engine (ISE) Advanced Package License

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that the Government holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the Government to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the Government Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the sales order.

The Government's subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco's receipt of the Government Purchase Order. The term expires after the duration specified in the Government Purchase Order has been reached. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.

Security

Cisco ISE Migration

[DOC-7](#)

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Product Name

L-ISE-ADV-250-M= Cisco ISE 250 EndPoint Advanced + Base Migration License

Identity Services Engine (ISE) Advanced Package License

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the GSA Customer Purchase Order.

Your subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco's receipt of the GSA Customer Purchase Order. The term expires after the duration specified in the GSA Customer Purchase Order. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.

Security

Cisco ISE All-in-One

[DOC-8](#)

Supplemental End User License Agreement for Identity Services Engine

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Product Name

For purposes of this SEULA, the Product name you have ordered is any of the following:

- Cisco ISE 1 Year Wireless Subscription License
- Cisco ISE 3 Year Wireless Subscription License
- Cisco ISE 5 Year Wireless Subscription License
- Cisco ISE 1 Year Wireless Upgrade Subscription License
- Cisco ISE 3 Year Wireless Upgrade Subscription License
- Cisco ISE 5 Year Wireless Upgrade Subscription License
- Cisco ISE 1 Year Advance Subscription License
- Cisco ISE 3 Year Advance Subscription License
- Cisco ISE 5 Year Advance Subscription License
- Cisco ISE Advance Migration Licenses

Identity Services Engine Term Licenses

Provided that you holds a valid license for the application software and that there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform, you are entitled to use the following Cisco Identity Services Engine (ISE) features and services depending on the Product you have ordered:

Cisco ISE Wireless Licenses

For the Cisco ISE Wireless Subscription License: you are entitled to use the Base and Advance features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription. A valid ISE Wireless Subscription License allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to the number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Cisco ISE Wireless Upgrade Licenses

For the Cisco ISE Wireless Upgrade Subscription License: you are entitled to use the Base and Advance features and services for all Endpoints (not just limited to Wireless Endpoints only), and to receive updates as made available during the term of the subscription. A valid ISE Wireless Upgrade Subscription License allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine Platform. The pre-requisite to install this ISE Wireless Upgrade Subscription License is the ISE Wireless Subscription License. A ISE Endpoint Wireless Upgrade Subscription License entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints). The endpoint count of the ISE Endpoint Wireless Upgrade Subscription License has to be the same as the pre-installed ISE Endpoint Wireless Subscription; or Cisco ISE Advance Licenses.

For the Cisco ISE Advance Subscription License: you are entitled to use the Advance Package features, services, and to receive updates as made available during the term of the Subscription. The ISE Advance Subscription License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

Cisco ISE Advance Migration Licenses

For the Cisco ISE Advance Migration Licenses: you are entitled to use the Base and Advance features and services, and to receive updates as made available during the term of the Subscription. The ISE Advance Migration License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. The Cisco ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and an ISE Advance License with a 3-year term. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Base and Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

Additional licenses

Additional ISE Licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

Term

The ISE Term Licenses are subscription-based, and have either a 1-year, 3-year, or 5-year term, except that: (a) the term of the ISE Wireless Upgrade License will expire at the same time as the pre-installed ISE Wireless License; and (b) the ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and a ISE Advance License with a 3-year term. The ISE Term Licenses are subject to the termination provisions contained in the FAR. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Features and Services may cease operation.

Features and Functionality

The ISE License provides features that require a valid license to operate. These features are supported on Cisco ISE hardware and software platforms.

Security

Cisco Content Security Software
(formerly Cisco IronPort Email and Web Security
Appliances and Security Management Application)

[DOC](#)

Supplemental End User License Agreement for Cisco Systems Content Security Software

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product licensed under the End User License Agreement ("EULA") between You ("GSA Customer" as used herein means You and its duly authorized employees, agents, consultants and/or independent contractors and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that

there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For purposes of this SEULA, the Product name and the Product description you have ordered is any of the Following Cisco Systems Email Security Appliance ("ESA"), Cisco Systems Web Security Appliance ("WSA") and Cisco Systems Security Management Application ("SMA") (collectively, "Content Security") and their Virtual Appliance equivalent ("Software"):

Cisco AsyncOS for Email
Cisco AsyncOS for Web
Cisco AsyncOS for Management
Cisco Email Anti-Spam, Sophos Anti-Virus
Cisco Email Outbreak Filters
Cloudmark Anti-Spam
Cisco Image Analyzer
Intel Security Public Sector, Inc. Anti-Virus
Cisco Intelligent Multi-Scan
Cisco RSA Data Loss Prevention
Cisco Email Encryption
Cisco Email Delivery Mode
Cisco Web Usage Controls
Cisco Web Reputation
Sophos Anti-Malware
Webroot Anti-Malware
Intel Security Public Sector, Inc. Anti-Malware
Cisco Email Reporting
Cisco Email Message Tracking
Cisco Email Centralized Quarantine
Cisco Web Reporting
Cisco Web Policy and Configuration Management
Cisco Advanced Web Security Management with Splunk
Email Encryption for Encryption Appliances
Email Encryption for System Generated Bulk Email
Email Encryption and Public Key Encryption for Encryption Appliances
Large Attachment Handling for Encryption Appliances
Secure Mailbox License for Encryption Appliances

Definitions

For purposes of this SEULA, the following definitions apply:

"GSA Customer Service" means the GSA Customer's email, Internet, security management services provided to employees and End Users for the purposes of conducting the GSA Customer's internal business.

"End User" means: (1) for the WSA and SMA, the employee, agent, consultant and/or independent contractor or other agent authorized by the GSA Customer to access the Internet and the SMA via the GSA Customer's Service; and (2) for the ESA, the email boxes of the employees, consultants, independent contractors, or other agents authorized by the GSA Customer to access or use the email services via the GSA Customer's Service.

"GSA Customer Purchase Order" means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the GSA Customer and Cisco or the GSA Customer and a Cisco reseller, or the valid terms of any GSA Customer Purchase Order accepted by Cisco in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

"Personally Identifiable Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

"Server" means a single physical computer or devices on a network that manages or provides network resources for multiple users.

"Services" means Cisco Software Subscription Services.

"Telemetry Data" means samples of the GSA Customer's email and web traffic, including data on email message and web request attributes and information on how different types of email messages and web requests were handled by the GSA Customer's Cisco hardware products. Email message metadata and web requests included in Telemetry Data are anonymized and obfuscated to remove any Personally Identifiable Information. "Term" means the length of the Software subscription you purchased, as indicated in the GSA Customer's Purchase Order.

"Virtual Appliance" means the virtual version of Cisco's email security appliances, web security appliances, and security management appliances.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

Additional License Terms and Conditions

LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION

License of Software.

The GSA Customer agrees to be bound by the terms of this Agreement, and so long as the GSA Customer is in compliance with this Agreement, Cisco hereby grants to The GSA Customer a nonexclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on Cisco's hardware products, or in the case of the Virtual Appliances, on a Virtual Machine, solely in connection with the provision of the GSA Customer Company Service to End Users. The number of End Users licensed for the use of the Software is limited to the number of End Users specified in the Ordering Documents. In the event that the number of End Users in connection with the provision of the Company Service exceeds the number of End Users specified in the Ordering Documents, Company shall contact an Approved Source to purchase additional licenses for the Software. The duration and scope of this license(s) is further defined in the Ordering Document. The GSA Customer Purchase Order supersedes the EULA with respect to the term of the Software license. Except for the license rights granted herein, no right, title or interest in any Software is granted to the GSA Customer by Cisco. Cisco's resellers or their respective licensors. The GSA Customer's entitlement to Upgrades to the Software is subject to any separate support contract that the GSA Customer may execute. This Agreement and the Services are co-terminus.

Consent and License to Use Data.

Subject to the Cisco Privacy Statement, Attachment 6.

The Government hereby consents and grants to Cisco a license to collect and use Telemetry Data from the Company. Cisco does not collect or use Personally Identifiable Information in the Telemetry Data. Cisco may share aggregated and anonymous Telemetry Data with third parties to assist us in improving the GSA Customer's user experience and the Software and other Cisco security products and services. The GSA Customer may terminate Cisco's right to collect Telemetry Data at any time by disabling SenderBase Network Participation in the Software. Instructions to enable or disable SenderBase Network Participation are available in the Software configuration guide.

Description of Other Rights and Obligations

Please refer to the Cisco Systems, Inc. End User License Agreement and Privacy Statement, Attachments 8 and 6.

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS VIRTUAL SOFTWARE PRODUCTS:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the GSA Customer's access and use of the Software, the GSA Customer agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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Definitions

"CPU" means a central processing unit that encompasses part of a Server.

"Failover Pair" means a primary Instance and a standby Instance with the same Software configuration where the standby Instance can take over in case of failure of the primary Instance.

"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

"Server" means a single physical computer or device on a network that manages or provides network resources for multiple users.

"Software" means Cisco's Adaptive Security Appliance 1000V Cloud Firewall Software, Nexus 1000V series switch products, Virtual Security Gateway products.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

"Service Provider" means a company that provides information technology services to external end user customers.

Additional License Terms and Conditions

1. Cisco hereby grants you the right to install and use the Software listed above in this SEULA on single or multiple Cisco or non-Cisco Servers or as a Virtual Machine.
2. A unit license fee to Cisco or an authorized Cisco reseller shall be due for each Cisco or non-Cisco Server CPU on which the Software is installed, per Virtual Machine run by the Software, or per Instance, as determined by Cisco. Cisco also reserves the right to offer, in its sole discretion, versions of the Software that may not be subject to a unit license fee.
3. For the Adaptive Security Appliance 1000V Cloud Firewall Software, You are licensed to the number of Instances of the Software equal to the number of CPUs covered by the unit license fee, and if You deploy a Failover Pair, for an additional standby Instance for each primary Instance.

Description of Other Rights and Obligations

Please refer to the Cisco Systems, Inc. End User License Agreement, Attachment 8.

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS INTEGRATED SECURITY
APPLIANCE SOFTWARE:
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AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER
PURCHASER.

Definitions

For purposes of this SEULA, the following definitions apply:

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

Additional License Terms and Conditions

Term License

The Software is licensed for the one (1) or three (3) year license term, as set forth in the Software purchase order documentation.

Version 1.0

Data, Information and Privacy

If You agree to this Agreement, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information, and the transfer of Personal Information and Non-personal Information to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, as described in Cisco's Privacy Statement included as Attachment 6.

Cisco ACS (all-in-one version)

[DOC-14](#)

Supplemental End User License Agreement for Access Control System

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Product Name

For purposes of this SEULA, the Product the Government has ordered is any of the following:

ACS 1121 Appliance With 5.x SW And Base license
 ACS 1121 Appliance And 5.x SW Upgrade from Previous Versions
 ACS application & BASE license for SNS-3415-K9 appliance
 Upgrade to ACS application on SNS-3415-K9 appl. w/ BASE license
 ACS 5.2 VMWare Software And Base License
 ACS 5.2 VMWare SW + Base License Upgrade from Previous Versions
 ACS 5.2 VMWare SW + Base License (Electronic Delivery)
 ACS 5.2 VMWare SW Upgrade (Electronic Delivery)
 ACS 5.3 VMWare Software And Base License
 ACS 5.3 VMWare SW + Base License Upgrade from Previous Versions
 ACS 5.3 VMWare SW + Base License (Electronic Delivery)
 ACS 5.3 VMWare SW Upgrade (Electronic Delivery)
 ACS 5.4 VMWare Software And Base License
 ACS 5.4 VMWare SW + Base License Upgrade from Previous Versions
 ACS 5.4 VMWare SW + Base License (Electronic Delivery)
 ACS 5.4 VMWare SW Upgrade (Electronic Delivery)

1. ADDITIONAL LICENSE RESTRICTIONS

Installation and Use of Cisco Secure Access Control System: The Cisco Secure Access Control System ("ACS") Software component of the Cisco Hardware Platform is preinstalled. CDs containing tools to restore this Software to the Hardware are provided to you for reinstallation purposes only. You may only run the supported Cisco Secure Access Control System Software Products on the Cisco Hardware Platform designed for its use. No unsupported software product or component may be installed on the Cisco Hardware Platform. Each Cisco Secure Access Control System is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one Cisco Secure Access Control System. Installation and Use of Cisco Secure Access Control System Software for Virtual Machine: The Cisco Secure Access Control System ("ACS") Software for Virtual Machine can run and is supported only on versions of Virtual Machine specified in the product documentation. Each copy of Cisco Secure ACS Software for Virtual Machine is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on with one and only one running Instance of Cisco Secure ACS Software.

2. DEFINITIONS

"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

"Server" means a single physical computer or device on a network that manages or provides network resources for multiple users.

"Virtual Appliance" means the virtual version of Cisco's email security appliances, web security appliances, and security and identity management appliances.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

TelePresence	Cisco TelePresence Multipoint Switch 1.5	DOC-14958
TelePresence	Cisco TelePresence Primary Codec	DOC-14958
TelePresence	Cisco TelePresence Express Manager System	DOC-14958

IMPORTANT: READ CAREFULLY

Dear Customer, Supplemental End User License Agreement

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For the purpose of this SEULA, we define the following terms:

"Intragovernmental Features" are those features that are deployed within an enterprise and do not traverse a service provider network for the purpose of interconnecting and communicating to other enterprises. This does not include transport provided for communication within the enterprise allowing it to communicate to itself.

"Inter-company Features" are those features that provide support for communications between enterprises through a service provider network.

In addition to the Agreement, the following supplemental terms apply to Inter-company Features.

Multipoint encryption for Inter-company feature is available in the Software Product but you are not authorized to use it until you have been permitted to do so upon notice from Cisco.

[DOC-14958](#)

TelePresence	Cisco TelePresence Manager	DOC-29311

TelePresence	Cisco TelePresence Express Multipoint Switch	DOC-14958

[DOC-29311](#)

Please see the SEULAs starting above for (DOC-29311) and for (DOC-14958) for the SEULAs applicable to these offerings.

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For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco explicitly authorizing support for the Restricted Features.

"Intra- Governmental Use" is a use of the Software Product which occurs within the government and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. "Inter company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of inter connecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter company Use also includes providing features of the Software Product in a commercially available service offering.

"Restricted Features" means one or more of the following features: (i) Inter company Multipoint encryption; and (ii) Inter company HD/SD Inter Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTERGOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. you are not authorized to use the Restricted Features for Inter-Governmental Use until the Cisco notifies the GSA Customer Restricted Features are generally available feature sets in the updated release notes for the Software Product. Notwithstanding the foregoing, your Intra-Governmental. Use of the Restricted Features shall not be restricted by this paragraph.
2. The CTS Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-Governmental Use. The CTS Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS Manager per tenant.

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“Authorized Service Provider” is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

“Intra-Governmental Use” is a use of the Software Product which occurs within the same Government entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same entities.

“Inter-Governmental Use” is a use of the Software Product which occurs between two or more Government entities and which traverses a service provider network for the purpose of interconnecting and communicating to other entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-Governmental Use also includes providing features of the Software Product in a commercially available service offering.

“Restricted Features” means one or more of the following features: (i) Inter-Governmental Multipoint encryption; and (ii) Inter-Governmental HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product, but may only be used for IntraGovernmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-GOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. The Government is not authorized to use the Restricted Features for Inter-Governmental Use until Cisco notifies the GSA Customer that the Restricted Features are available feature sets. Notwithstanding the foregoing, the GSA Customer's Intra- Governmental Use of the Restricted Features shall not be restricted by this paragraph.

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SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEO CONTROL PLANE AND CDN MANAGER ("SOFTWARE"): VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED

TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

THE GSA CUSTOMER'S RIGHT TO USE THE SOFTWARE IS LIMITED SOLELY TO THOSE PRODUCTS COMPONENTS OF THE SOFTWARE (INCLUDING BUT NOT LIMITED TO THE VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED.

WITH RESPECT TO THE SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE SOFTWARE; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE SOFTWARE.

When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF GSA CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, non-transferable, worldwide, royalty-free license to use the Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the capacity limitations set forth in the description of the product associated with the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of the Agreement.

Restricted Version and Use. GSA Customer may install and use the Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the Software. No other Updates, upgrades, or other Software releases are licensed by Cisco to GSA Customer hereunder.

Major Release means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

Minor Release means an incremental release of Software that provides maintenance fixes and additional Software functions.

Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

Customer Warranties

GSA Customer represents, warrants and covenants that (i) it shall only use the Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the Software beyond the Capacity set forth in the GSA Customer Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content

As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's business purposes and objectives.

ADDITIONAL SERVICES

Professional Services and/or Support Services relating to the Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.

Video	Cisco Videoscape Media Managed Services and Videoscape Media Suite Software	DOC-31551
Video	Cisco Videoscape Media Suite CMS	DOC-31151
Video	Cisco Videoscape Media Suite Entitlement	DOC-31151
Video	Cisco Videoscape Media Suite Publisher	DOC-31151
Video	Cisco Videoscape Media Suite Streaming Player	DOC-31151

IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEOSCAPE MEDIA SUITE SOFTWARE ("VMS SOFTWARE"): CMS, ENTITLEMENT, PUBLISHER, MEDIA STREAMING PLAYER, MEDIA DOWNLOAD APPLICATION
IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE VMS SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE VMS SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

GSA CUSTOMER'S RIGHT TO USE THE VMS SOFTWARE IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE VMS SOFTWARE (INCLUDING BUT NOT LIMITED TO THE CMS, ENTITLEMENT, PUBLISHER, STREAMING PLAYER OR DOWNLOAD APPLICATION COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. WITH RESPECT TO THE VMS SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE VMS SOFTWARE, INCLUDING ANY SERVICES

PROVIDED BY CISCO PURSUANT TO EXHIBIT C; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE VMS SOFTWARE.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE VMS SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a perpetual, nonexclusive, non-transferable, worldwide, royalty-free license to use the VMS Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the User Capacity, Transaction Capacity or Title Capacity (collectively, "Capacity") limitations set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the VMS Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of this Agreement.

Restricted Version and Use. GSA Customer may install and use the VMS Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the VMS Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the VMS Software. No other Updates, upgrades, or other VMS Software releases are licensed by Cisco to GSA Customer hereunder. Major Release means a release of VMS Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the VMS Software version number [(x).x.x].

Minor Release means an incremental release of VMS Software that provides maintenance fixes and additional VMS Software functions. Cisco designates Minor releases as a change in the tenths digit of the VMS Software version number [x.(x).x].

GSA Customer Warranties. GSA Customer represents, warrants and covenants that (i) it shall only use the VMS Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the VMS Software beyond the Capacity set forth in the Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content. As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the VMS Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. GSA Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's purposes and objectives. In the case where at no material fault of Cisco or the VMS Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify GSA Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, GSA Customer continues to allow its content to be accessed with any software or services operated in conjunction with the VMS Software during the period where there is no fix for such DRM security breach, or GSA Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then GSA Customer acknowledges and agrees Cisco will not have any liability to GSA Customer for any costs, damages or legal fees related to a DRM security breach.

ADDITIONAL SERVICES

Professional Services and/or Support Services relating to the VMS Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO WEBEX MEETINGS SERVER SOFTWARE:**IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED USB DRIVE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

1. Cisco WebEx Meetings Server (the "Software") is a software-based enterprise conferencing product that integrates audio, video and web conferencing in a single, on-premises solution.
2. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. The server component of the Software may be installed only on Cisco hardware that is: (a) operated by GSA Customer, or (b) operated by a third party under the GSA Customer's direct control. GSA Customer may copy and distribute the client component of the Software to its duly authorized agents, consultants and/or independent contractors solely and exclusively in connection with allowing such third parties to attend meetings hosted by GSA Customer using the Software, provided that GSA Customer shall remain responsible for such third parties' compliance with the Agreement. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on USB Drive or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Version 1.0
3. User Licenses.
"Employees" are the full and part-time employees, agents, consultants and/ or third-party independent contractors of GSA Customer. Employees may include third-party contractors, only if (a) GSA Customer allows the third-party contractor to use the Software only for the benefit of GSA Customer, (b) GSA Customer does not charge the third-party contractor for the use of the Software, and (c) GSA Customer takes full liability for the actions of the third-party contractor, including, but not limited to the third-party contractor's misuse of the Software. A "User" is a GSA Customer Employee assigned an account by GSA Customer to use the Software to host meetings. A User may host an unlimited number of meetings ("Meeting(s)") using the Software; provided that a User may only host one (1) Meeting at a time. Each Meeting must be hosted by a User and is limited to the maximum number or participants as determined by the capacity of the Software licensed by GSA Customer.
4. Limited User Licenses. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order"). GSA Customer may only have as many users as allowed under any and all applicable GSA Customer Purchase Orders. GSA Customer understands and agrees that the Software will perform internal checks to compare the number of Users using the Software with the number of Users licensed by GSA Customer, and if it repeatedly finds more Users than authorized, Cisco will provide notice to the GSA Customer and provide the GSA Customer with the opportunity to negotiate additional GSA Customer Purchase Orders to bring the GSA Customer into compliance.
5. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings and any other material ("Content") used, displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.
6. Privacy. GSA Customer understands and agrees that, as part of Cisco providing support to GSA Customer, Cisco may request access to and use of technical or diagnostic information (e.g., server logs) that may contain Personal Information and Non-personal Information of GSA Customer and/or GSA Customer's meeting invitees ("Server Data"). If you provide such Server Data to Cisco, you consent to Cisco's collection, use, processing and storage of Personal Information and Nonpersonal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purposes of providing GSA Customer support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or

contact individual users, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, included as Attachment

6. GSA Customer may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time by not providing Cisco access to the Server Data. Active steps are required each time by the System Administrator to provide Cisco access to the Server Data.
7. GSA Customer agrees that it will not use the Software to send unsolicited email outside GSA Customer's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). GSA Customer further agrees not to use the Software to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation.
8. The Software may not be appropriate for use in all countries. GSA Customer agrees that GSA Customer will comply with all applicable laws and regulations in connection with GSA Customer's use of the Software, including, but not limited to: (a) with respect to personally identifiable information sent or received by GSA Customer, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx Meetings Server meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of GSA Customer to ensure it has the right to use all features of the Software. Cisco may modify or not make available the Software and/or certain Software features to comply with applicable laws and regulations. The Software is subject to U.S. and local export control laws and regulations. GSA Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of the Software and will obtain all required U.S. authorizations, permits, or licenses. . The export obligations under this clause shall survive the expiration or termination of the Agreement.
9. The Software contains certain third party database products ("Third Party Database Products") that may impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure the Third Party Database Products separately and independently from the Software. GSA Customer shall not access the Third Party Database Products directly or through other database tools, but rather only through the Software. GSA Customer shall not navigate the underlying data schema of the Third Party Database Products. GSA Customer shall not access the Third Party Database Products or Version 1.0 establish the transfer of data without Cisco Application Programmer Interfaces APIs. GSA Customer shall not upgrade the Third Party Database Products separately, but only as a component of Third Party Database Products.
10. Oracle Java SE Terms and conditions. (i) Trademarks and Logos. This SEULA does not authorize an end user licensee to use any Oracle America, Inc. name, trademark, service mark, logo or icon. The GSA Customer acknowledges that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks"). and agrees to: (a) comply with the Java Trademark Guidelines included as Attachment 7; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. (ii) Third Party Code. Additional copyright notices and license terms applicable to portions of the Oracle Java SE software are set forth in the THIRDPARTYLICENSEREADME.txt file. (iii) Commercial Features. Use of the Commercial Features for any commercial or production purpose require a separate license from Oracle.re.
11. Portions of the Software utilize Microsoft Windows Media Technologies. Copyright (c) 1999-2006 Microsoft Corporation.

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS WEBEX SOCIAL SOFTWARE:**IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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1. WebEx Social Software is an enterprise collaboration platform that may provide different functionality including, but not limited to: content/documents (content development, content management, portals, and Intranets); communication (voice/video, instant messaging, conferencing, and email); business process (business applications, vertical applications, customer care, and workflow); and social networking (profiles, teams, communities, networks).
2. License. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.
3. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order").
4. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications and any other material ("Content") displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.
5. Third Party Offerings. Certain uses of Software may allow Customer to evaluate and use thirdparty applications and/or services ("Third Party Offerings"). Third Party Offerings may involve the exchange of data with the Software. Cisco is not responsible for Customer's data outside of the Software or for modifications or deletions of Customer's data made by third parties or their Third Party Offerings.
6. Use of Twitter Services. GSA Customer's use of Twitter Services is governed by and Twitter Terms of Services
7. WebEx Social Software contains certain Oracle database products ("Oracle Products") that impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure Oracle Products separately and independently from WebEx Social Software. Except for Enterprise Manager, GSA Customer shall not access Oracle Products directly or through other database tools, but rather only through WebEx Social Software. GSA Customer shall not navigate the underlying data schema of Oracle Products. GSA Customer shall not access Oracle Products or establish the transfer of data without Cisco APIs. GSA Customer shall not upgrade Oracle Products separately, but only as a component of Oracle Products.
8. WebEx Social Software contains IBM Licensed Materials. Copyright IBM Corporation 2009. IBM Licensed Materials or their modifications may not be used for any purpose other than to enable WebEx Social Software.

Attachments**Attachment 1**

This Service Level Agreement (this “**Agreement**”) sets forth Cisco Meraki’s obligations and our customers’ rights with respect to the performance of Cisco Meraki’s Hosted Software. All capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in the End Customer Agreement above (the Meraki SEULA), or as otherwise entered into between Cisco Meraki and Customer (the “**Customer Agreement**”).

1. Definitions. For purposes of this Agreement, the following terms have the meaning ascribed to each term below:

“**Downtime**” means if the Hosted Software is unavailable to Customer due to failure(s) in the Hardware, Firmware, or Hosted Software, as confirmed by both Customer and Cisco Meraki.

“**Monthly Uptime Percentage**” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“**Service Credit**” means the number of days that Cisco Meraki will add to the end of the Term, at no charge to Customer.

2. Service Level Warranty. During the Term, the Hosted Software will be operational and available to Customer at least 99.99% of the time in any calendar month (the “**Service Level Warranty**”). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer meets its obligations under this Agreement, then Customer will be eligible to receive Service Credit as follows:

Uptime Days Credited

< 99.99% - ≥ 99.9% 3

< 99.9% - ≥ 99.0% 7

< 99.0% 15

3. Customer Must Request Service Credit. In order to receive any of the Service Credits described above, Customer must notify Cisco Meraki within 30 days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

4. Maximum Service Credit. The aggregate maximum amount of Service Credit to be issued by Cisco Meraki to Customer for all Downtime that occurs in a single calendar month will not exceed 15 days. Service Credit may not be exchanged for, or converted into, monetary amounts.

5. Exclusions. The Service Level Warranty does not apply to any services that expressly exclude this Service Level Warranty (as stated in the documentation for such services) or any performance issues (i) caused by Force Majeure on the terms set forth in Section 9.3 of the Agreement, (ii) that resulted from Customer’s equipment or third party equipment, or both (not within the primary control of Cisco Meraki), or (iii) that otherwise resulted from Customer’s violation of Sections 3.5 or 4.2 of the Agreement.

6. Exclusive Remedy. This Agreement states Customer’s sole and exclusive remedy for any failure by Cisco Meraki to meet the Service Level Warranty.

Attachment 2

Meraki Support Overview:

Enterprise support at no additional cost

Cisco Meraki's simple, all-inclusive pricing includes enterprise-class phone support. We will help you deploy your first network or troubleshoot global network issues and other unforeseen emergencies at no additional cost.

Deep expertise and fanatical service

Our support engineers have deep expertise in enterprise networking and wireless design. The Cisco Meraki support team sits alongside the engineers who build Cisco Meraki products, providing a wealth of expertise.

Real time cloud-based support tools

Cisco Meraki support engineers use real time web-based tools to securely and quickly diagnose and troubleshoot your network, providing the speed and service of an on-site visit without the hassle.

The best support call is the one you don't have to make

Cisco Meraki self-provisioning hardware, automatic firmware updates, automatic network optimization, intuitive user interface and built-in contextual help dramatically reduce support incidents, providing reliable and hassle free enterprise networking.

Meraki Support Includes

Access to knowledge base

Case-based support viewable in dashboard

Firmware and software upgrades and updates

24x7 telephone support based out of San Francisco, London, Sydney technical assistance centers [Contact Support](#)

[Log in](#) to submit cases.

Telephone support

- US/North America
 - (415) 432-1203
- Europe
 - +44 20-78-71-2776
- Australia / Asia-Pacific
 - New Zealand
 - Singapore
 - +61 285203058
 - +64 99749591
 - +65 31582108
- Mexico
 - +52 5511638940
- Brazil
 - +55 1130422855

Note

Starting on January 1, 2014, you will need your Cisco Meraki account number in order to access telephone support. This number is available on the help tab of the Meraki dashboard.

Attachment 3

Meraki Privacy Policy

This privacy policy (this "**Policy**") describes the collection of personal information and certain other information by Meraki, LLC, a Delaware limited liability company and a wholly owned subsidiary of Cisco Systems, Inc. ("**Meraki**," "**we**," or "**us**") from users of our Web site at meraki.cisco.com (the "**Website**"), as well as all applications, widgets, software, tools, and other services provided by us and on which a link to this Policy is displayed (collectively, together with the Website, our "**Services**"). This Policy also describes our use and disclosure of such information. By using our Services, you consent to the collection, use, and disclosure of information in accordance with this Policy. This Policy is incorporated by reference into the [Meraki Terms of Use](#) and the [Meraki End Customer Agreement](#) and is subject to the provisions of the Meraki Terms of Use and the Meraki End Customer Agreement. The terms "**you**," "**your**," and "**user**" refer to the user visiting the Website or accessing or using the Services. Other capitalized terms used but not defined in this Privacy Policy have the meanings given to them in the Terms of Use. Meraki has received TRUSTe's Privacy Seal signifying that this privacy policy and our practices have been reviewed for compliance with the TRUSTe program viewable on the validation page available by clicking the TRUSTe seal.

If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please **contact TRUSTe**.

TRUSTe's Dispute Resolution process is only available in English.

The TRUSTe certification covers our collection, use and disclosure of information we collect through our Services. The use of information collected through our Services shall be limited to the purpose of providing the service for which the customer has engaged Meraki. Meraki complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Meraki has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Meraki's certification included under Cisco Systems Inc.'s company certification, please visit <http://www.export.gov/safeharbor>

Personal Information

"**Personal Information**," as used in this Policy, is information that specifically identifies an individual, such as an individual's name, address, telephone number, or e-mail address. Personal Information also includes information, such as demographic information (e.g., date of birth, gender, geographic area, and preferences), when any of this information is linked to Personal Information that identifies that individual. Personal Information does not include "aggregate" or other non-personally identifiable information. Aggregate information is information that we collect about a group or category of products, services, or users that is not personally identifiable or from which individual identities are removed. We may use and disclose aggregate information, and other non-personally identifiable information, for various purposes at our sole discretion and without notice or liability to you.

Collection of Information

Collection of Voluntarily-Provided Information

We collect Personal Information that our users provide to us in a variety of ways on our Services. These include the following:

- **E-mail Newsletters.** We may offer e-mail newsletters from time to time on our Services. If you sign up to receive a newsletter from us, we collect your e-mail address.
- **User Accounts and Profiles.** Our Services may give you the ability to register for an account or to create and update a user profile. If we offer user account or profile functionality on the Services, we will collect the Personal Information that you provide to us in the course of registering for an account or creating or updating a user account or profile. This information may include, for example, name, postal address, telephone number, e-mail address, and related demographic information about you. We may indicate that some Personal Information is required for you to register for the account or to create the profile, while some is optional.
- **Logging into Networks.** Certain networks using our Services may require users to establish or use login credentials. In connection with supporting this log-on functionality, we may collect information such as email addresses, telephone numbers, or user or administrator-created usernames, along with user-created or administrator-created passwords, to facilitate such log-on functionality and otherwise to provide our Services.
- **Correspondence.** If you contact us by e-mail, using a contact form on the Services, or by other means, we collect the Personal Information contained within, and associated with, your correspondence.
- **Contests and Sweepstakes.** We and other business partners may conduct or sponsor special contests, sweepstakes, and other promotions that users may enter or otherwise participate in on our Services or otherwise. Certain of these promotions may be co-branded with one of our advertisers or other business partners. In these instances, the collection of your Personal Information may occur directly by the third-party partner on its website or other online service and may be shared with us. The promotion will state the privacy policy or policies governing the collection of such personal information.
- **Testimonials.** We display testimonials of satisfied customers on our site in addition to other endorsements. With your consent we may post your testimonial along with your name.
- **Information Related to Data Collected for our Customers.** Meraki collects information under the direction of its customers, and has no direct relationship with the individuals whose personal data it processes. If you are an individual who makes use of services offered by one of our customers and would no longer like to be contacted by that customer, please contact the customer that you interact with directly. We may transfer personal information to companies that help us provide our Services. Transfers to subsequent third parties are covered by the service agreements with our customers.

Passive Information Collection

When you use or visit our Services, some information is collected automatically. For example, when you access our Services, we automatically collect your browser's Internet Protocol (IP) address, your browser type, the nature of the device from which you are visiting the Services (e.g., a personal computer or a mobile device), identifiers for any handheld or mobile device that you may be using, the Web site that you visited immediately prior to accessing any Web-based Services, the actions you take on our Services, and the content, features, and activities that you access and engage with on our Services. We also may collect information regarding your interaction with e-mail messages from Meraki, such as whether you opened, clicked on, or forwarded a message.

We may collect this information passively using technologies such as standard server logs, cookies, and clear GIFs (also known as "Web beacons"). We use passively-collected information to administer, operate, maintain and improve our Services and our other services and systems and to provide content that is tailored to you.

If we link or associate any information gathered through passive means with Personal Information, or if applicable laws require us to treat any information gathered through passive means as Personal Information, we treat the combined information as Personal Information under this Policy. Otherwise, we use and disclose information collected by passive means in aggregate form or otherwise in a non-personally identifiable form. Please be aware that in the course of your use of the Services, websites or other services provided by third parties ("**Third-Party Services**"), including marketing or website optimization vendors, may set cookies on your hard drive or use other means of passively collecting information about your use of their Third-Party Services or other services or content. To do this, they may use first-party cookies (which are set by the same domain your browser is receiving data from) or third-party cookies (which are set by a different domain). Meraki also may make non-personally identifiable information available to Third-Party Services, and these Third-Party Services may collect such information, to assist such parties in understanding our users' activities and usage patterns on the Services. If desired, you may use the [Google Analytics Opt-out Browser Add-on](#) to opt-out of having information collected by Google Analytics.

We do not have access to, or control over, the actions of Third-Party Services. Each provider of Third-Party Services uses information that it collects in accordance with its own privacy and security policies.

Additionally, please be aware that Google and other third-party vendors may place or recognize one or more unique cookies on your computer when you use the Services, and may record information to these cookies based upon your activities on our Services and on third-party websites and other Third-Party Services. Google and these other third-party vendors may use information about those activities to inform, optimize, and serve advertisements. In particular, we may use Google and other third-party vendors to engage in "remarketing," in which advertisements you see on third-party websites and services may be based on your prior visits to our Services.

To learn more about these practices, and to opt-out from Google's and other vendors' use of information collected on the Services through cookies for advertising purposes, you may visit [Google's Ads Preferences Manager](#), [TRUSTe's Preference Manager](#), or the [Network Advertising Initiative opt-out page](#). Please note that opting-out will not prevent advertisements from being served to you on the Internet; it will only result in advertisements that utilize cookies to serve advertisements on the specified advertising networks from which you opt-out no longer being targeted. We are not responsible for the activities of other parties that may not comply with your opt-out requests.

We also use Google Conversion Tracking, which tracks whether users engage in certain activities (e.g., filling out a form to receive more information about our products or services) after they view one of our advertisements on a Third-Party Service. Google uses cookies to track conversions and to report that information to us.

Finally, please also be aware that we use the Google Maps API as a source of maps, geographic data, and geolocation information for purposes of providing location-based information regarding terminal devices connected to networks managed by our Services and for providing related reporting and analysis. Google may collect information, including personal information, from those who view content provided through the Google Maps API, and Google handles such information in accordance with the [Google Privacy Policy](#).

Network Usage Information Collected by Our Services

Some of our Services collect information from terminal devices connected to networks that are managed by those Services. Those Services also collect information regarding the performance of, and certain other information regarding, such networks. This information includes, for example, MAC address, device type, operating system, geolocation information, and network traffic information (e.g., hostnames, protocols, port numbers, and IP addresses). This information is made available to administrators of networks managed by our Services through an online interface that we call the "dashboard". Additionally, if a Meraki customer elects to use our device management tool currently known as Systems Manager ("**Systems Manager**") and installs its software on, or configures the profile of, a mobile device or other device (e.g., a laptop computer) managed by Systems Manager, the customer or Meraki may undertake certain actions on the device, such as the following: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots; (iv) manage the device through remote desktop functionality; (v) set and enforce policies; and (vi) install/remove apps. Finally, for devices with Systems Manager installed or devices that utilize Global Positioning System (GPS) technology, we transmit certain geolocation information about those devices and the network(s) on which they are running to Google, which provides us with related geolocation information that we store and make available to network administrators through our dashboard as described above in this paragraph. Google handles the information that we provide to it in accordance with the [Google Privacy Policy](#).

Information from Other Sources

We may receive information about you, including Personal Information, from affiliated and unaffiliated third parties, and may combine this information with other Personal Information we maintain about you in order to ensure we have accurate information. If we do so, this Policy governs any combined information that we maintain in personally identifiable format.

Use of Information

We use Personal Information and other information we collect to do any of the following: provide services to our customers; provide information and otherwise respond to your requests, including sales inquiries, email requests, and shipping requests; enhance, improve, operate, maintain, and debug the Website, our other Services, and our other programs, services, Web sites, and systems; improve the effectiveness of our Website as a marketing tool and optimize the performance of the Website and our other Services; prevent fraudulent use of our Services and other systems; to prevent or take action against activities that are, or may be, in violation of the Meraki End Customer Agreement, the Meraki Terms of Use, or applicable law; to tailor content and other aspects of your experience on and in connection with the Services; maintain a record of our dealings with you; for other administrative purposes; and for any other purposes that we may disclose to you at the point at which we request your Personal Information, and pursuant to your consent.

We may also use Personal Information you provide to contact you regarding products, services, and offers, both from ourselves and third parties, that we believe you may find of interest. We allow you to opt-out from receiving marketing communications from us as described in the "Choice" section below.

Disclosure of Information

Except as described in this Policy, we will not disclose your Personal Information that we collect on the Services to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

Service Providers

We may disclose Personal Information to third-party service providers (e.g., payment processing and data storage and processing facilities) that assist us in our work. We limit the Personal Information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such Personal Information.

Business Transfers

Information about our users, including Personal Information, may be disclosed and otherwise transferred to an acquirer, successor, or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency,

bankruptcy, or receivership in which Personal Information is transferred to one or more third parties as one of our business assets. *To Affiliated Companies*

We may disclose Personal Information and other information to our parent company and to other corporate affiliates of ours. These affiliated third-party companies may use and disclose Personal Information and other information that we disclose to them in accordance with their privacy policies and procedures.

To Channel Partners

We may disclose Personal Information and other information to channel partners, such as resellers, of ours. These third parties may use such Personal Information and other information that we disclose to them for purposes such as marketing our products and services to you.

To Protect our Interests

We also may disclose Personal Information and other information if we believe that doing so is legally required or is in our interest to protect our property or other legal rights (including, but not limited to, enforcement of our agreements) or the rights or property of others, or otherwise to help protect the safety or security of our Services or other users of the Services.

Choices Regarding Promotional Communications

If you receive commercial e-mail from us, you may unsubscribe at any time by following the instructions contained within the e-mail. You may also opt-out from receiving commercial e-mail from us, and any other promotional communications that we may send to you from time to time (e.g., by postal mail) by sending your request to us by e-mail at privacy@meraki.com or by writing to us at the address given at the end of this policy. Additionally, if we offer user account functionality on the Services, we may allow you to view and modify settings relating to the nature and frequency of promotional communications that you receive from us.

Please be aware that if you opt-out of receiving commercial e-mail from us, it may take up to ten business days for us to process your opt-out request, and you may receive commercial e-mail from us during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding our Services.

Your California Privacy Rights

You may choose to opt-out of the sharing of your personal information with third parties for their direct marketing purposes at any time by e-mailing us at opt-out@meraki.com. Once we receive your opt-out request, we will no longer disclose your Personal Information to third-parties for their direct marketing purposes. Please be aware that this opt-out does not prohibit disclosures of Personal Information or other information made for non-direct marketing purposes.

Access

If we offer the ability to create user accounts or profiles on our Services, you may have the ability to access and update certain categories of Personal Information that you provide to us by logging in to your account and accessing your account settings. If you wish to access, amend, or delete any other Personal Information we hold about you, you may contact us at privacy@meraki.com.

If you request access to your account including deletion requests on any of our Services (via a user settings page, by email, or otherwise) including requests to remove testimonials that contain Personal Information, we will respond to your access requests within 30 days. Please note that we may need to retain some of your Personal Information in order to satisfy our legal obligations, or where we reasonably believe that we have a legitimate reason to do so.

Please note that Meraki has no direct relationship with the individuals whose personal data we process on behalf of our customers. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct his or her query to our customer (the data controller). If the customer requests Meraki to remove the data, we will respond to their request within 30 days.

We will retain personal data we process on behalf of our customers for as long as needed to provide services to our customer. Meraki will retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Links

The Services may contain links to other Web sites or other Third-Party Services that we do not own or operate. If you choose to visit or use any Third-Party Services or products or services available on or through such Third-Party Services, please be aware that this Policy will not apply to your activities or any information you disclose while using those Third-Party Services or any products or services available on or through such Third-Party Services. We are not responsible for the privacy practices of these Third-Party Services or any products or services on or through them. Additionally, the Services may contain links to Web sites and services that we operate but that are governed by different privacy policies. We encourage you to carefully review the privacy policies applicable to any Web site or service you visit other than the Services before providing any Personal Information on them.

Children

Children's safety is important to us, and we encourage parents and guardians to take an active interest in the online activities of their children. Our Services are not directed to children under the age of 13, and we do not knowingly collect Personal Information from children under the age of 13 without obtaining parental consent. If we learn that we have collected Personal Information from a child under the age of 13 on our Services, we will delete that information as quickly as possible. If you believe that we may have collected any such Personal Information on our Services, please notify us at privacy@meraki.com.

International Visitors

Many of our servers and data centers are located in the United States. If you choose to use the Services from outside the U.S., then you should know that you may be transferring your Personal Information outside of your region and into the U.S. for storage and processing. By providing your Personal Information to us through your use of the Service, you agree to that transfer, storage, and processing in the U.S. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Services. You should know that each region can have its own privacy and data security laws, some of which may be less stringent as compared to those of your own region.

Security

We use certain security measures in an effort to protect Personal Information from accidental loss, disclosure, misuse, and destruction. The security of your Personal Information and our customers' information is important to us. When you enter sensitive information (such as login credentials) we encrypt the transmission of that information using secure socket layer technology (SSL). Please be aware, however, that no data security measures can be guaranteed to be completely effective. Consequently, we cannot ensure or warrant the security of any information that you provide to us. You transmit information to us at your own risk.

If Meraki learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Meraki may post a notice through the Services if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach, you should notify us at privacy@meraki.com.

Attachment 4

Meraki Return Policy

Warranty Returns

If you are experiencing hardware issues, please contact Cisco Meraki support by signing in to dashboard (Help > File a Ticket) or by [calling us](#). If you require advance replacement, please call Cisco Meraki technical support. Advance replacement orders will ship within 1 business day. Cisco Meraki stands behind its products. Hardware products come with either a one year or lifetime warranty, as specified on the relevant Cisco Meraki data sheet.

To request a return materials authorization (RMA), please complete our RMA request form. If your RMA request is approved, Cisco Meraki will email you an RMA number and a return shipping label free of charge. We will ship replacement units within five business days of receiving your defective units. If no trouble is found, we will contact you before taking further action.

Additional information about Cisco Meraki's hardware warranty can be found in [Cisco Meraki's End Customer Agreement](#).

Free Trial Returns

If you would like to return units from a free trial, please go to your free trial webpage (using the link your rep provided you with) and go to the returns tab to fill out the RMA request form. If your free trial hardware was shipped to the US, Canada, or an EU member country you will also be able to print out a return shipping label and ship the product back to Cisco Meraki at no charge to you.

Refund Requests

If you are dissatisfied with your Cisco Meraki purchase for any reason, you may return your order for a full refund. All returns must meet the following criteria:

1. You purchased the product through an authorized Cisco Meraki reseller or direct from Cisco Meraki
2. You are the original purchaser of the product
3. You submit your refund request within 30 days of purchase
4. The product is in new condition, including all accessories in the original packaging

To request a refund, please complete our RMA request form.

If your refund request is approved, Cisco Meraki will email you an RMA number. In order for the refund to be accepted and processed, Meraki must receive the hardware you are returning no later than 30 days following the date the RMA number is issued. Once we have received and inspected the units, we will process your return. If you purchased through a Cisco Meraki reseller, your refund will be issued by that reseller. If you purchased directly from Cisco Meraki, we will issue a refund, typically within 15 days of receiving the return. (If you paid by credit card we will credit the original credit card. If you paid by any other method, we will send you a check.)

From time to time Cisco Meraki offers special refund terms. If your return is covered by special terms, please reference those terms on your RMA request.

Please contact Cisco Meraki directly for all returns, including product purchased through distributors or resellers.

Shipment Preparation

- Please return units in their entirety. That is, include all power supplies, antennas, and other components along with the original product box.
- Please use the original shipping carton and packaging material. If this is not possible, use another shipping carton with padding to protect the units from damage during shipping. DO NOT ship a product without a carton.
- The customer will be charged for product that is damaged due to insufficient packaging.
- Once you have received your RMA number from Cisco Meraki via email, write this RMA number in large letters on the exterior of the shipping carton. Shipments to Cisco Meraki without an RMA approval will not be processed.
- If Cisco Meraki approves your RMA request, you will receive a confirmation email containing an RMA number within two business days. The address to which the product should be sent will also be included in that email.
- Cisco Meraki will pay for warranty replacement return shipments and free trial return shipments from the US and Canada. For all other returns it is your responsibility to pay for return shipping back to Cisco Meraki using the carrier of your choice. Cisco Meraki recommends that the return package has a tracking number and is insured for the proper value of its contents. Cisco Meraki is not responsible for packages lost by carriers.

Attachment 5

This document describes Cisco's Software Application

All capitalized terms in this description have the meaning ascribed to them in the Glossary of Terms. Direct Sale from Cisco. If you have purchased these Services directly from Cisco, this document is incorporated into your Master Services Agreement (MSA) with Cisco. In the event of a conflict between this Service Description and your MSA, this Service Description shall govern.

Sale via Cisco-Authorized Reseller. If you have purchased these Services through a Cisco-Authorized Reseller, this document is for description purposes only; is not a contract between you and Cisco. The contract, if any, governing the provision of this Service will be the one between you and your Cisco Authorized Reseller.

SAS

Cisco Responsibilities:

- Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration and troubleshooting issues. Cisco will respond within one Business (1) hour for all calls received during Standard Business Hours and for Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next Business Day.
- Manage problems according to the [Cisco Severity and Escalation Guideline](#).
- Access to Cisco.com. This system provides Customer with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.
- Work-around solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at Customer's expense.
- Minor and Maintenance Releases. The Application Software releases and supporting Documentation are available on the Cisco.com Software Center (www.cisco.com/Software) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) (www.cisco.com/PUT). Applicable supporting Documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.

SASU

Cisco Responsibilities:

- Cisco-provided deliverables, as specified above in SAS.
- Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting Documentation will be made available on the Cisco.com Software Center (www.cisco.com/Software) or on media such as CDROM, through the Cisco PUT (www.cisco.com/PUT). Applicable supporting Documentation, if available, is available on Cisco.com and is limited to one copy per licensed Software. Additional copies may be purchased.

Customer Responsibilities:

The provision of the Service options assumes that Customer will:

- Provide a severity level as described in the [Cisco Severity and Escalation Guideline](#) for all the calls Customer places.
- Provide, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.
- Notify Cisco, using Cisco.com, of Product on the Equipment List which Customer has moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to Customer beginning thirty (30) days after receipt of your notification. Cisco will also need Customer to notify Cisco of any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.
- Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.

- Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where Customer is seeking information from Cisco in connection with Product use. Cisco may also require Customer to provide additional information in the form of location of the Product, city location details and zip code information.
- When requested, provide Cisco with a list of all personnel that Customer has authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or ordered via Cisco's PUT. Customer is responsible for reviewing the list on an annual basis and adding or removing personnel as necessary
- Verify any in-transit damage of the media for the SAS or SASU Application Software Updates.
- Update to the latest Application Software release and latest third-party Software release, if required by Cisco to correct a reported Application Software problem.
- Pay all engineering time, travel, and out-of-pocket expenses if Customer request performance of onsite Services or Services outside the scope of Service options described in this document.
- Provide any Hardware required to perform fault isolation.
- Receive Services on Cisco Application Software for which Customer has:
 - Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.
 - Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.
 - Acquire, install configure and provide technical support for all:
 - Third-party Products, including upgrades required by Cisco or related Services; and
 - Network infrastructure, including, but not limited to, local and wide-area data Networks and equipment required by Cisco for operation of Application Software.
 - Maintain Customer's entire Application Software implementation for configurable Application Software currently in use under the same Service option for Cisco to provide Services for any portion of Customer's Application Software implementation.

Attachment 6

Cisco Online Privacy Statement

Cisco Systems, Inc. and its subsidiaries (collectively "Cisco") are committed to protecting your privacy and ensuring you have a positive experience on our websites and in using our products and services ("Solution" or "Solutions"). This Privacy Statement applies to Cisco websites that link to this Statement but does not apply to those Cisco websites that have their own privacy statement. Our personal information handling practices are described below, in the supplements on the right, and in notices at the point of collection.

TRUSTe Certification

Cisco Systems, Inc. has been awarded TRUSTe's Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with [TRUSTe's program requirements](#) including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program only covers information that is collected through the websites www.cisco.com, www.webex.com, and www.theflip.com, and does not cover information that may be collected through any software downloaded from these websites.

TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions. If you have questions or complaints regarding our privacy policy or practices, please contact us at privacy@cisco.com. If you are not satisfied with our response, you can contact [TRUSTe here](#).

Cisco complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Cisco has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Cisco's certification, please visit <http://www.export.gov/safeharbor/>.

Collection of Your Personal Information

We will inform you of the purpose for collecting personal information when we collect it from you and keep it to fulfill the purposes for which it was collected, as required by applicable laws or for legitimate purposes. "Personal Information" is any information that can be used to identify an individual, and may include name, address, email address, phone number or payment card number. We collect Personal Information (and engage third parties to collect Personal Information to assist us) for a variety of reasons, such as processing your order, providing you with a newsletter subscription, enabling the use of certain features of our Solutions, personalizing your experience, managing a job application, or during the testing admissions process when a computer based certification test is administered to you (for more information about online testing, <http://pearsonvue.com/Cisco>). We and the third parties we engage may combine the information we collect from you over time and across our websites with information obtained from other sources to help us improve its overall accuracy and completeness, and to help us better tailor our interactions with you.

If you choose to provide third party Personal Information (such as name, email and phone number), we will assume that you have the third party's permission to provide us the information. Examples include forwarding reference material to a friend or job referrals. This information will not be used for any other purpose.

In some instances, Cisco may collect non-personal (aggregate or demographic) data through cookies, web logs, web beacons and other similar applications. This information is used to better understand and improve the usability, performance, and effectiveness of the website. Please read the "Cookies" section below for more information. In addition, by using some of our Solutions, anonymous network information may be transmitted to us such as the performance of the Solution and types of devices attached to the network. With this information we can determine how users are

interacting with the Solution, to assist us with improving it, to manage your network, and to provide alerts via the Solution of available software updates/upgrades.

Uses of Your Personal Information

We will only use your Personal Information in the way we specified when it was collected. We will not subsequently change the way your Personal Information is used without first asking for your permission. Some of the ways we may use Personal Information include to deliver a Solution that you have requested, support our Solutions, contact you for customer satisfaction surveys, personalize websites and newsletters to your preferences, administer and process your certification exams, or communicate for marketing purposes. You can edit your preferences at any time (see [Your Choices and Selecting Your Communication Preferences](#) below).

Access to and Accuracy of Your Personal Information

We need your help in keeping your Personal Information accurate and up to date so please notify us of any changes to your Personal Information. To update your Personal Information and communication preferences, you can contact privacy@cisco.com. In addition, you may have the ability to view or edit your personal information online, including:

- **Cisco.com** – You can access and update your profile using the [Cisco Profile Management Tool](#). You may also make these updates or request deactivation of your website profile by sending an email to web-help@cisco.com.
- **Home.cisco.com (formerly Linksysbycisco.com)** – You can access and update your profile by signing into your Online Account at <http://home.cisco.com/>. You may also make these updates or request deactivation of your website profile by sending an email to privacy@linksys.com.
- **Webex.com** – You can access and update your profile by signing into your user online account at <http://try.webex.com/mk/get/profile>. You may also make these updates or request deactivation of your website profile by sending an email to privacy@webex.com.
- **TheFlip.com** – You can access and update your profile by signing into your user online account at <http://puredigital2.custhelp.com/cgi-bin/puredigital2.cfg/php/enduser/ask.php>. You may also make these updates or request deactivation of your website profile by sending an email to remove@theflip.com.

We make good faith efforts to honor your reasonable request to access and correct your data if it is inaccurate or delete the data if we are not required to retain it by law or for legitimate purposes. We will respond to your request to access within 30 days.

For a list of Cisco entities that may be considered data controllers from time to time and where you can exercise your rights of access and request corrections or deactivations under applicable data protection laws, [click here](#).

Your Choices and Selecting Your Communication Preferences

We give you the choice of receiving a variety of information that complements our Solutions. You can manage your communication preferences and unsubscribe using one of the following methods:

- Each promotional email from us includes instructions on how you can unsubscribe from that particular mailing.
- Sending a message via email at privacy@cisco.com or via mail to Cisco Systems, Inc., Legal Department, 170 West Tasman Dr., San Jose, CA 95134, USA. Please be sure to include your name, email address and specific relevant information about the material that you no longer wish to receive.

These choices do not apply to the receipt of mandatory service communications that are considered part of certain Solutions, which you may receive periodically unless you cancel the Solution in accordance with its terms and conditions.

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We do not sell or share your Personal Information to third parties for marketing purposes unless you have granted us permission to do so. We will ask for your consent before we use or share your information for any purpose other than the reason you provided it or as otherwise provided by this Privacy Statement. We may share Personal Information in the following ways:

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- With business partners, service vendors, authorized third-party agents or contractors to provide a requested service or transaction, including processing orders and credit card transactions, hosting websites, hosting seminar registration and providing customer support. We only provide these third parties with the minimum amount of Personal Information necessary to complete/provide the requested service or transaction. We do not allow third parties to use your Personal Information for a different purpose.
- To comply with the law or legal process (such as responding to subpoenas or court orders) and to exercise our legal rights or defend against legal claims.
- To investigate, prevent, or take action regarding illegal activities, suspected or potential fraud, brand protection matters (such as gray market sales or use of Cisco's trademark without a license), situations involving potential threats to the physical safety of any person, violations of Cisco's terms of use, or as otherwise required by law.

Security of Your Personal Information

We are committed to protecting the Personal Information you share with us and utilize a combination of industry-standard security technologies, procedures, and organizational measures to help protect your Personal Information from unauthorized access, use or disclosure. We recommend you to take every precaution in protecting your Personal Information when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, and make sure you use a secure browser. When you enter sensitive information on our forms, we encrypt this data using SSL or other technologies. Please visit our Learning Center for more tips for using security features when connected to the Internet using a router.

Retention of Personal Information

We will only retain your Personal Information to fulfill the purposes for which it was collected or as required for legitimate purposes or permitted by law.

Use of Cookies and other Web Technologies

Like many websites, Cisco uses automatic data collection tools, such as cookies, embedded web links and web beacons. These tools collect certain standard information that your browser sends to our website such as your browser type and the address of the website from which you arrived at our website. They may also collect information about your Internet Protocol (IP) address (a number automatically assigned to your computer whenever you are surfing the Web, allowing Web servers to locate and identify your computer, which is a unique address assigned to your PC by your Internet Service Provider or Information Systems Department on a TCP/IP network) and clickstream behavior (for example, the

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We may provide links to other third-party websites and services which are outside our control and not covered by this Privacy Statement. We encourage you to review the privacy statements posted on those websites (and all websites) you visit.

Forums/Chat Rooms

If you participate in a discussion forum or chat room on a Cisco website, you should be aware that the information you provide there will be made broadly available to others, and can be read, collected or used by other users of these forums, potentially inside or outside Cisco, who have access to that discussion forum or chat room. This information could also be used to send you unsolicited messages. Also, please recognize that individual forums and chat rooms may have additional rules and conditions. Each participant's opinion on a forum or chat room is his or her own and should not be considered as reflecting the opinion of Cisco. We are not responsible for the Personal Information or any other information you choose to submit in these forums.

Children's Privacy

Cisco does not knowingly collect Personal Information from children under the age of 13. If we learn that we have collected Personal Information of a child under the age of 13, we will delete that data from our systems. Please note that the Personal Information collected by Cisco Networking Academy (NetAcad) is subject to the privacy statement posted on the NetAcad websites along with any applicable privacy supplement.

Cisco encourages parents and guardians to go online with their children. Here are a few tips to help make a child's online experience safer:

- Teach children never to give Personal Information (such as name, address, phone number, school, etc.) unless supervised by a parent or responsible adult.
- Know the sites your children are visiting and which sites are appropriate.
- Look for website privacy policies and know how your child's information is treated.

For more tips on protecting children's privacy online, please see Cisco's Online Privacy Portal [here](#) or FTC's website [here](#).

Consent to Transfer, Processing and Storage of Personal Information

As Cisco is a global organization, we may transfer your Personal Information to Cisco in the United States of America, to any Cisco subsidiary worldwide, or to third parties acting on our behalf, for the purposes of processing or storage. By providing any Personal Information to us, you fully understand and unambiguously consent to the transfer, processing and storage of such information outside of your country of residence where data protection standards may be different. Our Privacy Statement and our practices are designed to provide a globally consistent level of protection for Personal Information all over the world. This means that even in countries whose laws provide for less protection for your information, Cisco will still handle your information in the manner described here.

Your California Privacy Rights

Residents of the State of California, under California Civil Code § 1798.83, have the right to request from companies conducting business in California a list of all third parties to which the company has disclosed Personal Information during the preceding year for direct marketing purposes. Alternatively, the law provides that if the company has a privacy policy that gives either an Opt-out or Opt-in choice for use of your Personal Information by third parties (such as advertisers) for marketing purposes, the company may instead provide you with information on how to exercise your disclosure choice options.

Cisco qualifies for the alternative option. We have a comprehensive privacy statement, and provide you with details on how you may either Opt-out or Optin to the use of your Personal Information by third parties for direct marketing purposes. Therefore, we are not required to maintain or disclose a list of the third parties that received your Personal Information for marketing purposes during the preceding year.

If you are a California resident and request information about how to exercise your third party disclosure choices, please send a request to privacy@cisco.com.

How to Contact Us

We value your opinions. Should you have any privacy-related questions or comments related to this Privacy Statement, please send an email to privacy@cisco.com.

Updates to this Cisco Privacy Statement

We may update this Privacy Statement at any time, so please review it frequently. If we change our Privacy Statement, we will post the revised version here, with an updated revision date. If we make significant changes to our Privacy Statement, we may also notify you by other means prior to the changes taking effect, such as sending an email or posting a notice on our website.

REVISED AND POSTED AS OF: FEBRUARY 3, 2014. Please note this version does not substantively change the way we treat personal information compared to the previous version of the privacy statement available [here](#).

Attachment 7

Oracle Trademarks

Oracle's trademarks and service marks ("Oracle trademarks") are valuable assets that Oracle needs to protect. We ask that you help us by properly using and crediting Oracle trademarks in accordance with these guidelines. For information about proper use of Oracle logos, logotypes, signatures, and design marks, please review the Third Party Usage Guidelines for Oracle Logos.

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You may generally use Oracle trademarks to refer to the associated Oracle products or services. For instance, an authorized reseller can note in its advertisements that it is selling the Oracle application server. Similarly, an Oracle customer may issue a press release stating that it has implemented Oracle software.

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Prohibited Use

You may not use Oracle trademarks in a manner which could cause confusion as to Oracle sponsorship, affiliation or endorsement. Take particular care not to use Oracle marks as set out below.

Company, Product or Service Names

Do not use Oracle trademarks or potentially confusing variations as all or part of your company, product or service names. If you wish to note the relationship of your products or services to Oracle products or services, please use an appropriate tag line as detailed above. For example, "XYZ for Oracle database" not "OraXYZ or XYZ Oracle"

Logos

For more information regarding use of Oracle logos, please review the Third Party Usage Guidelines for Oracle Logos.

Trade Dress

You must not imitate Oracle trade dress, type style or logos. For instance, do not copy Oracle packaging for use with your product or display your product name in the distinctive logotype associated with the Oracle logo.

Domain Names

Do not use Oracle trademarks or potentially confusing variations in your Internet domain name. This helps prevent Internet users from being confused as to whether you or Oracle is the source of the Web site.

Correct Use

Proper use of Oracle trademarks reinforces their role as brands for our products and services, and helps prevent them from becoming generic names that can be used by anyone. Examples of former trademarks that became generic terms are "aspirin," "cellophane," and "escalator." By adhering to the following rules, you help protect Oracle's investment in its trademarks.

Use a Generic Term

Use a generic term in association with each Oracle trademark the first time the mark appears in text, and as often as possible after that. You need not include generic names in headlines, package titles and documentation titles. For example, "Oracle iLearning software", "Oracle On Demand services", and "Oracle database."

Use as Adjectives

Oracle trademarks are adjectives and should not be used as nouns, or in the possessive or plural form. For example, "Oracle database's benefits." not "Oracle's benefits..."

Avoid Variations

Do not vary Oracle trademarks by changing their spelling or abbreviating them. For example, "Oracle Collaboration Suite" not "CollabSuite."

Trademark Symbols and Credit Lines

Proper trademark attribution through trademark symbols and credit lines helps makes the public aware of our trademarks, and helps prevent them from becoming generic terms. Credit lines also help clarify that they belong to Oracle. Accordingly, Oracle would appreciate you attributing ownership of Oracle trademarks to Oracle Corporation by using trademark symbols (™ or SM or ®) and credit lines as detailed below.

Trademark Symbols

Use the ® symbol with the most prominent appearance of the "Oracle" mark on products, packaging, manuals, advertisements, promotional materials and Web pages (for example, in the headline of an advertisement), and the first use of the mark in text or body copy. This includes situations where "Oracle" is a part of a product or service name (for example, Oracle® Collaboration Suite, Oracle® PartnerNetwork). You do not need to use trademark symbols with other Oracle trademarks.

Example: XYZ Develops New Product for Oracle® Database XYZ Corporation, a member of the Oracle® PartnerNetwork program, has developed the ABC software cartridge for use with the industry leading Oracle database. The ABC software cartridge is one of numerous products XYZ has developed that complement leading Oracle offerings. "Oracle" receives a trademark symbol in the headline because this is the most prominent appearance, and when it appears as part of the "Oracle PartnerNetwork" name because this is the first appearance in text. While there is no trademark symbol after "Oracle" when it appears in front of the term "products" and "offerings" since we already used a symbol the first time the term "Oracle" appeared in body copy. It is always acceptable to continue using the ® after "Oracle" throughout the document.

Credit Line

All products, packaging, manuals, advertisements, promotional materials and Web pages bearing Oracle trademarks should include the following trademark credit line. "Oracle and Java are registered trademarks of Oracle and/or its affiliates. Other names may be trademarks of their respective owners."

The credit line may appear anywhere on the collateral, but typically is displayed on a copyright page, the back of a package or at the end of a document or web page.

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Trade names are the actual business names of companies. Trademarks and trade names are not the same, even though many companies use their trade names as trademarks. If you are using "Oracle" as a substitute for Oracle Corporation, you are using it as a trade name. Because they are nouns, trade names can be used in the possessive and do not require a generic term or a trademark symbol. Thus, you should not use a ® after "Oracle" when it appears as part of the full corporate name or as a trade name.

Examples

Corporate Name: This software was developed by Oracle Corporation.

Trade Name: This software was developed by Oracle.

Trade Name: Oracle's latest software developments are outstanding.

Trademark: The Oracle® database leads the industry.

Attachment 8

CISCO END USER LICENSE AGREEMENT (EULA)

Cisco EULA

September 24, 2013 as provided on Cisco.com: http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html

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ATTACHMENT 9

Reserved

Attachment 10

VMware End User License Agreement

Effective August 27, 2012, VMware is eliminating the vRAM restriction on licenses to VMware vSphere. The removal of the vRAM limit from VMware vSphere licenses applies retroactively to any past and existing users of VMware vSphere, in addition to any new users of VMware vSphere. This new policy replaces and supersedes any conflicting terms in any license agreement previously agreed upon between VMware and any licensee of VMware vSphere. This change does not apply to VMware vSphere users under the VMware Service Provider Program. **PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.**

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1.15 “Third Party Agent” means a third party delivering information technology services to You pursuant to a written contract with You.

1.16 “Virtual Machine” means a software container that can run its own operating system and execute applications like a physical machine.

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12.5 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6 Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to".

12.7 Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

12.8 Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

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- 12.9 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.
- 12.10 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.
- 12.11 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. - See more at: http://www.vmware.com/download/eula/esxi50_eula.html#sthash.PWRl1eoX.dpuf

Cisco WebEx, LLC
3979 Freedom Cir.
Santa Clara, CA 95054

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CISCO WEBEX LICENSE, WARRANTY AND SUPPORT TERMS

Cisco “WebEx” Terms and Conditions

September 24, 2013 as provided on Cisco.com:

http://www.cisco.com/web/products/software_licensing_center.html and specifically
<http://contractdocuments.webex.com/webextermsconditions.pdf>

WebEx Terms and Conditions

1. **WebEx Services.** These WebEx Terms and Conditions (“Agreement”) govern the use by the Subscriber of any services (the “Services”) ordered by Subscriber from WebEx and set forth in one or more Order Forms. “Services” in this Agreement does not refer to or include any professional services. Professional services ordered by Subscriber, if any, will be as set forth in a statement of work governed by separate terms and conditions.
2. **Order Forms.** An “Order Form” is a form signed by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes a link to the Service Description(s). An Order Form is effective only when signed by Subscriber and either signed or provisioned by WebEx. Subscriber may be required to provide information in order to register for and/or use certain Services. Subscriber warrants that all such information is accurate.
3. **Changes to Services.** WebEx may, at its sole discretion and from time to time, enhance and/or expand the features of a Service at no additional cost to Subscriber. WebEx may also, at its sole discretion and from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost (“Cost Feature”). If Subscriber elects to add a Cost Feature, it may do so by contacting its local WebEx sales representative or WebEx directly at http://www.webex.com/go/contact_sales in order to receive a quote for the Cost Feature. Further, WebEx may elect to discontinue the availability of a Service, provided that such discontinuance will be effective no earlier than expiration of the then-current Initial or Renewal Term as specified in the applicable Order Form. Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback that Subscriber provides to WebEx without payment of compensation to Subscriber.
4. **Beta Services.** WebEx may, at its sole discretion, make available to Subscriber a “beta” version of any of the Services (the “Beta Services”) for purposes of evaluation and feedback. Subscriber acknowledges that the Beta Service(s) Subscriber is evaluating may contain bugs, errors and other problems and is provided to Subscriber “AS-IS.” WebEx disclaims any warranty or liability obligations to Subscriber of any kind with respect to the Beta Services. Subscriber further acknowledges the importance of communication between WebEx and Subscriber during Subscriber’s use of the Beta Services and hereby agrees to receive related correspondence and updates from WebEx. In the event Subscriber requests to opt-out from such communications, Subscriber’s participation in the Beta Services will also be canceled. Subscriber also hereby acknowledges that WebEx has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that WebEx has no express or implied obligation to Subscriber to announce or introduce the Beta Services. During the WebEx Beta program, Subscriber will be asked to provide feedback regarding Subscriber’s use of the Beta Service(s). Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback (including, but not limited to, feedback on any Beta Services) that Subscriber provides to WebEx without payment of compensation to Subscriber. WebEx may suspend or terminate access to Beta Services (and delete any Content or data provided to WebEx with respect to such Beta Service(s)) at any time, without notice and without any liability to Subscriber.
5. **Fee Adjustments.** WebEx may, upon at least forty-five (45) days prior written notice and effective at the end of the then-current Initial or Renewal Term, adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within thirty (30) days of receiving such notice from WebEx, to either (i) modify the quantity or type of Services utilized by Subscriber by a mutual written amendment between the parties, or (ii) terminate the affected Order Forms upon written notice, either of which will become effective at the end of the then current Initial or Renewal Term.
6. **WebEx Training and Support.** Online training and online support will be provided by WebEx at no additional cost, and is specified in the service descriptions included on the applicable Order Form.
7. **Payment.** Subscriber will pay invoices for the Services when due, and in accordance with the Payment Terms set forth on the Order Form. WebEx reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment (not being reasonably disputed by Subscriber) that is not received when due. Subscriber must notify WebEx in writing of any disputed fees within fifteen (15) days of the invoice date. WebEx may suspend the Services ten (10) business days following WebEx’s written notice to Subscriber that Subscriber’s payment of undisputed fees is ten (10) or more business days delinquent. Additionally, WebEx is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due. Subscriber shall pay all taxes (exclusive of taxes based on the net income of WebEx), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by WebEx to Subscriber.
8. **Term and Termination.**
 - a. **Term and Termination of Order Forms.** The “Initial Term” of an Order Form will be for the number of months set forth on the Order Form, commencing on the date the Service is available for use by Subscriber. Each “Renewal Term” will begin at the end of the preceding (Initial or Renewal) Term and continue as set forth on the Order Form. Either party may terminate any Order Form at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term.

- b. Term and Termination of Agreement.** This Agreement will commence on the date Subscriber signs its first Order Form and may be terminated by written notice effective upon the termination of all of Subscriber's Order Forms. Each party may terminate any Order Form(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days after written notice thereof from the terminating party.
- c. Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Sections 7 and any payment provisions set forth in the Order Form (as to amounts due and owing as of this Agreement's expiration or termination date), 9, 10, 11, and 12. Upon any termination of this Agreement, Subscriber must cease any further use of the Services and destroy any copies of associated software within its possession and control (to the extent not prohibited by applicable law).
- 9. Subscriber Responsibilities.**
- a. Account Number/Password.** Except when Subscriber's account number/password is obtained by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that Subscriber is solely responsible for maintaining the confidentiality of Subscriber's username, account number and passwords and solely responsible for any unauthorized usage. Subscriber agrees to immediately notify WebEx of any unauthorized use of Subscriber's account of which Subscriber becomes aware.
- b. Content.** Except when Subscriber's account is accessed by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("Content") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Service. Under no circumstances will WebEx be liable to Subscriber for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. Subscriber understands and agrees that by displaying, posting, uploading, storing, exchanging or transmitting Content while using the Services or otherwise providing Content to a WebEx website or space ("Site"), Subscriber automatically grants (and warrants and represents it has a right to grant) to WebEx, solely for the purpose of offering the Sites and/or the Services to Subscriber, a world-wide, royalty-free, sublicensable (so WebEx affiliates, contractors, resellers and partners can deliver the Services) license to use, modify, publicly perform, publicly display, reproduce and distribute the Content, during the course of this Agreement and any delivery of Services. If at any time Subscriber objects to any material on a Site, Subscriber's sole remedy is to cease using it (to the extent not prohibited by applicable law). WebEx does not endorse and has no control over what Subscribers or other users of the Service ("Users") post or submit to a Site. Subscriber shall contact WebEx Customer Support at 866-229- 3239 if Subscriber becomes aware of misuse of the Services by any person. WebEx cannot guarantee the accuracy of any information submitted by any User or Content, nor any identity information about any User. WebEx may without notice or liability investigate any complaints and violations or suspected violations of this Agreement that come to its attention and may take any action that it believes is appropriate, including, but not limited to, to rejecting, refusing to post or removing any profile, posting Content, or other data, or restricting, suspending, or terminating Subscriber or any User's access to a Site or Services. However, because situations and interpretations vary, WebEx also reserves the right not to take any action.
- c. Communications.** Subscriber agrees that Subscriber will not use the Services to send unsolicited email outside Subscriber's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). Subscriber further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation. Subscriber agrees to indemnify, defend and hold harmless WebEx from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Subscriber's violation of this Section 9.
- d. Privacy.** Subscriber acknowledges and agrees that WebEx acts as a passive conduit and it will not monitor or disclose Content, except as needed to provide the Services, as instructed by Subscriber, or as otherwise required by law. Use of the Sites and the Services constitutes consent by Subscriber to WebEx's and/or its affiliates' collection and use of such information and, for European Economic Area (EEA) customers, to the transfer of such information to a location outside the EEA, as well as to other countries deemed to have adequate data protection laws. Use of Sites and the Services is also subject to the Cisco Systems, Inc. Online Privacy Statement located at <http://www.cisco.com/web/siteassets/legal/privacy.html>, which is incorporated into this Agreement by this reference. The foregoing notwithstanding, WebEx may contact Subscriber via e-mail or otherwise with information relevant to Subscriber's use of the Services and payment obligations, if any, regardless of whether Subscriber has opted out of receiving such notices. Subscriber also agrees to have Subscriber's name and/or email address listed in the header of certain communications Subscriber initiates through the Services.
- 10. Warranty Disclaimer.** SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, SITES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, MAKE NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES OR THE SITES, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. Without limiting the foregoing, the Services are not designed or licensed for use in environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and WebEx, and its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.
- 11. Limitation of Liability.** IN NO EVENT WILL WEBEX, OR ITS SUPPLIERS, RESELLERS OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING,

WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE SITES, OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF WEBEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, WEBEX'S (AND ITS SUPPLIERS', RESELLERS' AND AFFILIATES') MAXIMUM CUMULATIVE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER, IF ANY, FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Subscriber.

12. General.

- a. Proprietary Rights.** Excluding Subscriber Marks and Content, WebEx and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and Sites and in all trade names, trademarks, service marks, logos, and domain names ("WebEx Marks") associated or displayed with the Services. Subscriber may not frame or utilize framing techniques to enclose any WebEx Marks, or other proprietary information (including images, text, page layout, or form) of WebEx without WebEx's express written consent. Subscriber may not use any meta tags or any other "hidden text" utilizing WebEx Marks without WebEx's express written consent.
- b. Use of Subscriber's Name and Logo.** Subscriber agrees that WebEx may use Subscriber's name, logo and other trademarks or service marks of Subscriber (collectively "Subscriber's Trademarks") to create a co-branded Services website as part of delivery of the Services. Nothing in this Agreement transfers to WebEx any right, title or interest in or to the Subscriber's Trademarks, and all goodwill arising from use of the Subscriber's Trademarks will inure to the Subscriber's benefit.
- c. Copyright Policy.** Subscriber retains copyright and any other rights it already holds in Content which Subscriber submits, stores, posts or displays on or through, the Services. Subscriber may not post, store, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. WebEx may deny access to the Sites or the Services to any User who is alleged to infringe another party's copyright. If Subscriber believes that WebEx or any of its affiliates or any user of WebEx has violated a copyright, please contact us at: DMCAagent@cisco.com for details on how to properly notify us of a potential copyright infringement or other intellectual property rights issue. In the event Subscriber's content is removed pursuant to this process, Subscriber will receive information on how to file a counter-notice. Notices and counter-notices are legal notices distinct from regular Service activities or communications. As such, they are not subject to WebEx's Privacy Policy. This means WebEx may publish or share them with third parties at WebEx's discretion, and WebEx may produce them pursuant to a legal discovery request.
- d. Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and WebEx may assign its rights and delegate its obligations in whole or in part to an affiliate. Either party may terminate this Agreement upon ten (10) days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.
- e. Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. This Agreement, including all Attachments and Service-specific Supplemental Terms (if any), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. However, WebEx and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or WebEx's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and WebEx.
- f. Force Majeure.** Neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
- g. Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.
- h. Use of the Services.** Subscriber may use the Services only as permitted under the terms and conditions of this Agreement or other written agreements between Subscriber and WebEx. Subscriber will not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly generate income from the Services. Subscriber will not modify, make derivative works of, disassemble, decompile or reverse engineer the Sites, Services or any component thereof (except to the extent expressly permitted by law). For meeting Services, Subscriber may use the Services only for sessions or meetings in which Subscriber is an active participant.
- i. Software.** Subscriber may be required to download and install WebEx software ("Software"). In that event, WebEx agrees to provide Subscriber with a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the Software in accordance to the terms of this Agreement. Subscriber may not use the Software for anything other than as intended by WebEx in connection with Subscriber's use of the

Services. Subscriber may not use the Software with any device, program or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by copyright laws. All rights not expressly granted by WebEx are hereby reserved. Subscriber agrees not to take any action to interfere with WebEx's or its supplier's ownership of or rights in the Software. Subscriber agrees that, unless otherwise permitted in this license or by law, Subscriber will not: (i) reproduce, republish, display, frame, download, distribute, or transmit the Software; (ii) to the extent permitted under applicable law redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software; (v) except to the extent expressly permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software; (vi) create or use any software other than as authorized by WebEx to access the Software; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software in any way that violates this Agreement, or any other agreements between Subscriber and WebEx or its affiliates, or any law; and (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the Services.

j. Legal Compliance. Subscriber agrees that Subscriber will comply with all applicable laws and regulations in connection with Subscriber's use of the Services, including, but not limited to: (a) with respect to personally identifiable information sent or received by Subscriber, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of Subscriber to ensure it has the right to use all features of the Services in Subscriber's jurisdiction. WebEx may modify or not make available Services or Service features to comply with applicable laws and regulations. Subscriber represents that Subscriber is not an individual less than 18 years of age, or an emancipated minor, or over the age of 13 and possess legal parental or guardian consent to register for and use the Sites and Services. WebEx products, technology and the Services are subject to U.S. and local export control laws and regulations. Subscriber shall comply with such laws and regulations governing use, export, reexport, and transfer of products, technology and Services and will obtain all required U.S. and local authorizations, permits, or licenses. Subscriber certifies that Subscriber and any third parties Subscriber invites will not use the Service from within an embargoed country. Subscriber certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of this Agreement.

k. Governing Law. Subscriber's use of the Services is subject to Subscriber entering into the Agreement with the WebEx entity specified below based on where Subscriber or its business is located. Choice of law and the location for resolving disputes with such WebEx entity for Subscriber's region/country is also specified below. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under those applicable laws.

i. For North America and South America, the WebEx entity is Cisco WebEx LLC. The websites for this region are webex.com (US and Canada), webex.com.mx (for Latin America) and webex.com.br (for Brazil). Governing law for this region is the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal courts of California shall have exclusive jurisdiction over any claim.

ii. For Europe, Africa and the Middle East, the following shall apply. For the United Kingdom, the WebEx entity is WebEx Communications UK, Ltd. and the website is webex.co.uk. For France, the WebEx entity is WebEx Communications France SARL and the website is webex.co.fr. For Germany, the WebEx entity is WebEx Communications Deutschland GmbH and the website is webex.co.de. For the rest of Europe, Africa and the Middle East, the WebEx entity is WebEx Communications B.V. and the websites vary by location, please check webex.com for links to specific local country websites, including webex.es (for Spain). Governing law for these regions/countries is the laws of England. The English Courts shall have exclusive jurisdiction over any claim arising under this Agreement. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

iii. For Japan, the WebEx entity is WebEx Communications Japan, K.K. The website for Japan is webex.co.jp. Governing law is the laws of Japan. The Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement. **iv.** For Australia, New Zealand, Oceania, China, India and the rest of Asia, the following shall apply. For Australia, New Zealand and Oceania, the WebEx entity is WebEx Australia Pty Ltd. and the website is webex.com.au. For India, the WebEx entity is WebEx Communications India Private Limited and the website is webex.co.in. For China, the WebEx entity is WebEx (China) Software Ltd. Co. and the website is webex.com.cn. For the rest of Asia, the WebEx entity is WebEx Asia Limited and the websites include webex.com.hk (for Hong Kong) and webex.co.kr (for South Korea). Governing law for these regions/countries is the laws of the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement.

v. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of intellectual property rights. **vi.** The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

Citrix Systems, Inc.
831 West Cypress Creek Road
Ft. Lauderdale, FL 33309

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CITRIX SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **GRANT OF LICENSE.** This PRODUCT contains software that provides services on a computer called a server ("Server Software") and contains software that allows a computer to access or utilize the services provided by the Server Software ("Client Software"). This PRODUCT is licensed under a concurrent user, user, or device model. For purposes of this license, i) "Concurrent User" is single client device connected to the Server Software; ii) "User" is an individual authorized by Ordering Activity to use any device(s) to access instances of the Server Software through Ordering Activity's assignment of a single user ID, regardless of whether or not the individual is using the PRODUCT at any given time; and iii) a "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under the User or Device model, Ordering Activity may deploy network architectures that use hardware or software to reduce the number of Users or Devices that directly access the Server Software. This is referred to as *multiplexing* or *pooling*. This does not reduce the number of Licenses required to access or use the Server Software. A License is required for each User or Device that is connected to the multiplexing or pooling software or hardware front end. Ordering Activity must acquire and assign a License to each User or Device that accesses Ordering Activity's instances of the Server Software directly or indirectly, frequently or infrequently. Client Software is not activated by Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use for the PRODUCT. Licenses are version specific for the PRODUCT. They must be the same version or later than the Server Software being accessed. CONTRACTOR grants to Ordering Activity the following worldwide, non-exclusive rights to the Server Software and Client Software and accompanying documentation (collectively called the "SOFTWARE"):
 - a. **Server Software.** Ordering Activity may install and use the Server Software on one or more computers ("Server(s)"). Each License may be installed and used on a single license server within Ordering Activity's production environment and a single license server within Ordering Activity's disaster recovery environment. The Server Software may be used only to support up to the allowable number of Concurrent Users, Users or Devices based on Ordering Activity's total purchases of Licenses. Ordering Activity may use the Server Software to provide application services to third parties ("Hosting"). Each License that is installed in both a production and disaster recovery environment may be used only in one of the environments at any one time, except for duplicate use during routine testing of the disaster recovery environment. If Ordering Activity purchased the Enterprise or Platinum editions of this PRODUCT, each License may be used only to support use of any one or more of the edition features for the same Concurrent User, User or Device. Ordering Activity's use of Application Streaming to included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of EasyCall voice services included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of Profile management included with XenApp Enterprise or Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise and Platinum hosted applications, and not other users. Ordering Activity's use of Provisioning services included with the XenApp Platinum Edition is limited to provisioning only the XenApp Platinum Edition workload. Ordering Activity's use of Single Sign-On included with XenApp Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Platinum hosted applications, and not other users. If multiple Licenses are delivered for the various features of the edition, they should be treated as a single License. If Ordering Activity received this PRODUCT as a component of XenDesktop Enterprise or Platinum Edition, the Server Software may be used either to provide presentation services to physical or virtual machines running in the XenDesktop environment or directly to client devices.
 - b. **Client Software.** Under the Concurrent User or User model, the Client Software may be installed and used on an unlimited number of client devices. Under the Device Model, the Client Software may be installed and used only on Devices. Ordering Activity may use Client Software only to allow Concurrent Users, Users and Devices to access instances of the Server Software.
 - c. **Perpetual License.** If the SOFTWARE is "Perpetual License SOFTWARE," the SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage (as defined in Section 2 below).
 - d. **Annual License.** If the SOFTWARE is "Annual License SOFTWARE," Ordering Activity's license is for one (1) year and includes the right to receive Updates for that period (but not under Subscription Advantage as defined in Section 2 below). For the purposes of this ATTACHMENT A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must purchase and install an additional Annual License prior to the expiration of the current Annual License. Note that if a new Annual License is not purchased and installed, Annual SOFTWARE disables itself upon the expiration of the then-current Annual License period.
 - e. **Archive Copy.** Ordering Activity may make one (1) copy of the SOFTWARE in machine-readable form solely for backup purposes, provided that Ordering Activity reproduce all proprietary notices on the copy.
2. **SUBSCRIPTION RIGHTS.** Ordering Activity's subscription for the SOFTWARE ("Subscription") shall begin on the date the Licenses are delivered to Ordering Activity by email. Should Licenses be delivered to Ordering Activity on a tangible license card, Subscription shall instead begin on the date Ordering Activity request that the Licenses be allocated to Ordering Activity through mycitrix.com. Subscription shall continue for a one (1) year term subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the initial or a renewal Subscription Term, CONTRACTOR may, from time to time, generally make Updates available for licensing to the public. Upon general availability of Updates during the Subscription Term, CONTRACTOR shall provide Ordering Activity with Updates for covered Licenses. Any such Updates so delivered to Ordering Activity shall be considered SOFTWARE under the terms of this ATTACHMENT A, except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. Subscription Advantage may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the SOFTWARE. Nothing contained in this ATTACHMENT A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that CONTRACTOR is not obligated under this ATTACHMENT A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

3. **SUPPORT.** Ordering Activity may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the date of SUPPORT activation by CONTRACTOR THROUGH CITRIX and shall run for a one (1) year term subject to Ordering Activity's purchase of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts, coverage hours, geographic coverage areas, technical relationship management coverage, and infrastructure assessment options. An "Incident" is defined as a single SUPPORT issue and reasonable effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. SUPPORT may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only. SUPPORT will be provided remotely from CONTRACTOR THROUGH CITRIX to your locations. Where on-site visits are mutually agreed, Ordering Activity will be billed for reasonable travel and living expenses in accordance with Ordering Activity's travel policy. CONTRACTOR THROUGH CITRIX' performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity will designate a Customer Support Manager ("CSM") who will be the primary administrative contact; (ii) Ordering Activity will designate Named Contacts (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM) will be supplied with an individual service ID number for contacting SUPPORT; (iii) Ordering Activity agree to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by CONTRACTOR THROUGH CITRIX. Ordering Activity agrees to cooperate with such requests; (iv) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (v) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site and providing CONTRACTOR THROUGH CITRIX with access to Ordering Activity's facilities as required to operate the SOFTWARE and permitting CONTRACTOR THROUGH CITRIX to perform the service called for by this ATTACHMENT A; and (vi) Ordering Activity is required to implement all currently available and applicable hotfixes, hotfix rollup packs, and service packs or their equivalent to the SOFTWARE in a timely manner. CONTRACTOR THROUGH CITRIX is not required to provide any SUPPORT relating to problems arising out of: (i) Ordering Activity's customization to the operating system or environment that adversely affects the SOFTWARE; (ii) any alterations of or additions to the SOFTWARE performed by parties other than CONTRACTOR THROUGH CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor and peripherals for which such SOFTWARE was designed and licensed for use on; or (iv) SOFTWARE that has reached End-of-Life. In situations where CONTRACTOR THROUGH CITRIX cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal SUPPORT methods, CONTRACTOR THROUGH CITRIX may engage its product development team to create a private fix. Private fixes are designed to address Ordering Activity's specific situation and may not be distributed by Ordering Activity outside Ordering Activity's organization without written consent from CONTRACTOR. CONTRACTOR retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not SOFTWARE under the terms of this ATTACHMENT A and they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. With respect to infrastructure assessments or other consulting services, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the property of CONTRACTOR, subject to a worldwide, nonexclusive License to Ordering Activity for internal use.
4. **DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS.** Unless expressly permitted by applicable law, Ordering Activity may not transfer, rent, timeshare, or lease the SOFTWARE. Under the User or Device model, Ordering Activity may permanently reassign a License from one User to another or from one Device to another, and Ordering Activity may temporarily assign a License to a temporary worker while the User is absent or a License to a loaner device while the Device is out of service. If Ordering Activity purchased Licenses for the SOFTWARE to replace other CITRIX Licenses for other CITRIX SOFTWARE and such replacement is a condition of the transaction, Ordering Activity agrees to destroy those other CITRIX Licenses and retain no copies after installation of the new Licenses and SOFTWARE. Ordering Activity shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to the reseller, and upon request, directly to CONTRACTOR for license tracking purposes. Except as specifically licensed herein, Ordering Activity may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to the extent such foregoing restriction is expressly prohibited by applicable law. Ordering Activity may not remove any proprietary notices, labels, or marks on any SOFTWARE. Notwithstanding the foregoing, this ATTACHMENT A shall not prevent or restrict Ordering Activity from exercising additional or different rights to any free, open source code, documentation and materials contained in or provided with the SOFTWARE in accordance with the applicable free, open source license for such code, documentation, and materials.

ORDERING ACTIVITY MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT A. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CONTRACTOR OR ITS SUPPLIERS.

5. **LIMITED WARRANTY AND DISCLAIMER.** CONTRACTOR warrants that for a period of ninety (90) days from the date of delivery of the SOFTWARE to Ordering Activity, the SOFTWARE will perform substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and included with the PRODUCT. CONTRACTOR and its suppliers' liability and Ordering Activity's remedy under this warranty (which is subject to Ordering Activity returning the SOFTWARE to CONTRACTOR or an authorized reseller) will be, at the option of CONTRACTOR and subject to applicable law, to replace the media and/or SOFTWARE or to refund the purchase price and terminate this ATTACHMENT A. CONTRACTOR will provide the SUPPORT requested by Ordering Activity in a professional and workmanlike manner, but CONTRACTOR cannot guarantee that every question or problem raised by Ordering Activity will be resolved or resolved in a certain amount of time. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY

FOR SOFTWARE, CONTRACTOR AND ITS SUPPLIERS MAKE AND ORDERING ACTIVITY RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CONTRACTOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND HARDWARE TO ACHIEVE ORDERING ACTIVITY'S INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE AND HARDWARE.

6. **PROPRIETARY RIGHTS.** No title to or ownership of the SOFTWARE is transferred to Ordering Activity. CONTRACTOR and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the SOFTWARE, including any\ adaptations or copies. Ordering Activity acquires only a limited License to use the SOFTWARE.
7. **U.S. GOVERNMENT END-USERS.** If Ordering Activity is a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)), Ordering Activity hereby acknowledge that the SOFTWARE constitutes "Commercial Computer Software" and that the use, duplication, and disclosure of the SOFTWARE by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this ATTACHMENT A. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, Ordering Activity hereby acknowledge that the Government's right to use, duplicate, or disclose the SOFTWARE are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida, 33309.

EXHIBIT A – ORDERING ACTIVITY RETURN POLICY

Limited Warranty. Contractor warrants to Ordering Activity for each Product that the Hardware delivered as part of an Appliance shall be free from defects in material and workmanship in normal use for a period of one (1) year from the date of purchase. Ordering Activity's remedy and the liability of Contractor, its licensors, and suppliers under this warranty. This warranty extends only to the original Ordering Activity and may not be assigned. Ordering Activity's remedy and the liability of Contractor, its licensors and suppliers under this limited warranty (which is subject to Ordering Activity returning the Hardware to Contractor or an authorized reseller) will be, at the discretion of Contractor, to replace the Hardware or refund the purchase price. This warranty does not cover any loss or damage which occurs in shipment or which is due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by Ordering Activity or a third party; (2) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (3) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, or other irregularities; or (4) third party software or software drivers. Ordering Activity's maintenance agreement as detailed in Exhibit B hereunder with Contractor will supersede this Ordering Activity Return Policy.

Warranty Returns. Ordering Activity may return to Contractor through Citrix any defective Product subject to the limited warranty above. Prior to such return, Ordering Activity shall verify that the Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall use commercially reasonable efforts to send to Ordering Activity an RMA form and RMA number within five (5) business days of Ordering Activity's request. Within five (5) business days after receiving an RMA number for the Product, Ordering Activity shall package the Product in its original packing material or equivalent, write the RMA number on the outside of the package and return the Product, at Contractor's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to the Product during shipping. Citrix shall elect to repair or replace the Product using new or reconditioned parts (of better or equivalent quality) at Citrix's discretion, and shall pay the shipping costs to return the Product to the location from which it was returned by Ordering Activity. Any Product that has been returned, but that Citrix determines not to be defective, or that is not otherwise covered under the limited warranty above, shall be returned to Ordering Activity at Ordering Activity's expense and risk. Title to any Product returned under warranty shall at all times remain with Ordering Activity unless and until Citrix either replaces the Product or pays Ordering Activity the Price of the Product in lieu of repair or replacement, at which time title shall pass to Citrix. The warranty period of any repaired or replaced Product shall be the longer of (a) ninety (90) calendar days from Citrix's return shipment of the Product or (b) the original warranty period for the Product. Citrix shall not be responsible for any software, firmware, information, memory, data or the like of Ordering Activity or other's contained in, stored on or integrated with any Product returned to Citrix for repair, whether or not under warranty.

EXHIBIT B – CITRIX APPLIANCE MAINTENANCE & TECHNICAL SUPPORT

1. SERVICES PROVIDED BY CITRIX.

Contractor through Citrix offers a range of maintenance programs for its Products (including standard Products and optional Products) as described below and as summarized in the below Citrix Appliance Maintenance Program Overview (the "Program Overview"). Ordering Activity shall be entitled to receive the following services to the extent Ordering Activity has ordered and paid in full the Annual GSA Fee for the applicable service. Ordering Activity must purchase maintenance services for its optional Products where Ordering Activity has maintenance services in place for the corresponding standard Product. Ordering Activity may purchase maintenance services for its optional Products only where it has maintenance services in place for the corresponding standard Product. Ordering Activity may also purchase optional installation and/or consulting services as offered by Contractor through Citrix.

Extended hardware Warranty Ð includes the following:

Except as otherwise provided in this Attachment A, Contractor warrants to Ordering Activity that the Hardware (as defined below) shall be free from material defects in materials and workmanship during the term of this Attachment A. Contractor's liability and Ordering Activity's remedy under this warranty shall be limited to repair or replacement of, or refund of the price paid for, the non-conforming Product at Contractor's option. For purposes of this Attachment A, "Hardware" shall mean that portion of the Product that is not the Software. For purposes of this Attachment A, "Software" shall mean the Product software, in machine-readable form, and accompanying user documentation licensed to Ordering Activity by Contractor pursuant to an applicable purchase order between Ordering Activity and Contractor for such license.

Software Subscription Service D includes the following:

Software Updates.

Ordering Activity's subscription for Software ("Subscription Advantage") shall be effective during the term of this Attachment A, subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the Subscription Term, Contractor may, from time to time, generally make Updates available for licensing to the public. For the purposes of this Attachment A, an Update shall mean a generally available release of the same Software. Upon general availability of Updates during the Subscription Term, Ordering Activity may obtain Updates by downloading the Update from Contractor through Citrix's server via the Internet. Any such Updates so delivered to Ordering Activity shall be considered Software under the terms of this Attachment A, except they are not covered by the Limited Warranty applicable to Software, to the extent permitted by applicable law. Subscription Advantage may be purchased for the Software until it is no longer offered in accordance with the Citrix Product Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledges that Contractor through Citrix may develop and market new or different computer programs or editions of the Software that use portions of the Software and that perform all or part of the functions performed by the Software. Nothing contained in this Attachment A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that Contractor is not obligated under this Attachment A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works Citrix (Incoterms 2000).

Bronze/Silver/Gold Maintenance

Bronze Maintenance includes all of the services set forth above under Extended Warranty Program and Software Subscription Service, plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within twenty four (24) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twenty four (24) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above. Prior to such return, Ordering Activity shall verify that said Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA ") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than ten (10) business days after Citrix's issuance of an RMA number (or longer in countries where regulation requires export approval documentation in advance of RMA shipment). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Ordering Activity's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to such Product during shipping. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity, and Ordering Activity shall pay for the replacement Product at the then current GSA price. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

Silver Maintenance includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within twelve (12) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twelve (12) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

Gold Maintenance includes all of services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

Telephone Support. During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Citrix's support technician shall only be obligated to respond to Ordering Activity's designated contacts.

Support Service Level. Contractor through Citrix shall respond within two (2) hours of receiving an inquiry from Ordering Activity regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

Returns. During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

Advance Return

Prior to any return as to which Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix's issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Citrix's shipping expense to Citrix's designated facility. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

*Current list of countries requiring export approval documentation before shipment of replacement Product:

Country	RMA Documents	Time Estimate
Egypt	CVO/EX A/Embassy	10 business days
Jordan	CVO/EX A/Embassy/Min. foreign	10 business days
Kuwait	EX A/Embassy/CVO	10 business days
Qatar	EX A/Embassy/CVO/Min. foreign	10 business days
Norway	EU A	1 business day
Switzerland	EU A	1 business day
Dubai/United Arab Emirates	CVO/EX A	2 business days
Israel	CVA/EX A	2 business days
Russian Federation	EX A	2 business days
Saudi Arabia	EX A/CVO	2 business days
South Africa	EX A	2 business days
Turkey	EX A/ATR	2 business days

4-hour Advance Return

Where available, and upon payment of the applicable GSA fees, Ordering Activities receiving Gold Maintenance may select an optional expedited Advance Return service. The features of the 4-hour Advance Return are the same as the standard Advance Return above, except that Contractor through Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than four (4) hours after Citrix's issuance of an RMA number.

Onsite Support

This Attachment A does not include onsite support. In critical situations, Ordering Activity may request onsite support as a separate and distinct billable service, subject to a separate purchase order between Contractor and Ordering Activity. Onsite support is subject to Contractor through Citrix resource availability, and the tasks performed will vary based on the situation, environment, and business impact of the problem.

Product Development Support

In situations where Contractor through Citrix cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal support methods, Citrix may engage its product development team to create a Ordering Activity-specific solution (a "Private Fix") to the Products. Private Fixes are designed to address a specific Ordering Activity situation and may not be distributed by Ordering Activity outside

the Ordering Activity organization without written consent from Citrix. Private Fixes and hotfixes are provided 'as-is', without warranty of any kind applicable to Software pursuant to this Attachment A to the extent permitted by applicable law. Citrix retains all right, title and interest in and to all Private Fixes.

Technical Relations Management

Ordering Activity may select an optional Technical Relations Manager (TRM) to enhance the technical support relationship between Ordering Activity and Contractor through Citrix. The TRM provides high-level technical expertise and proactive services, and also serves as the point of information delivery and feedback to Citrix product groups, research and development teams, and other Citrix groups. These services include:

- Orientation Session. At the start of this service, an initial orientation session will be scheduled for the TRM to introduce the Ordering Activity to Citrix Technical Support contact information and processes.
- Escalation Management. In cases where issues need engineering assistance, the TRM will act as the Ordering Activity's advocate and function as point-of-contact to assist in rapid resolution of the incident.
- Implementation and Informational Reviews. The TRM will be a resource for the Ordering Activity to assist with product information and recommendations for integration of Citrix products in the Ordering Activity environments.
- Incident Tracking and Status Reporting Sessions. TRM will provide the Ordering Activity on a regular basis, reports summarizing Ordering Activity account information such as incidents opened and status updates.

TRM services can only be used in a single geographical region. Ordering Activities wishing to use TRM services in more than one region must purchase 200 hour blocks in each region. All TRM purchased hours are valid for 12 months from date of purchase; unused TRM hours do not roll over into a subsequent purchase order term. Citrix regions are as follows: (a) Americas – North America, Latin America, and the Caribbean; (b) EMEA – Europe, Middle East and Africa; (c) Asia Pac –Asia, New Zealand and Australia and (d) Japan. Ordering Activities should contact Contractor through Citrix Technical Support to determine TRM service availability in their region.

2. ORDERING ACTIVITY RESPONSIBILITIES.

- a. **Ordering Activity Assistance.** Contractor through Citrix's performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity agrees to provide Citrix reasonable access to all necessary personnel to answer questions or resolve problems reported by Ordering Activity regarding the Products; (ii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by Citrix. Ordering Activity agrees to cooperate with such requests; (iii) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of Software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site; (v) Ordering Activity is required to implement all currently available and applicable Updates and error corrections provided by Citrix under this Attachment A in a timely manner, including hotfixes, hotfix rollup packs, and service packs or their equivalent; and (vi) Ordering Activity shall allow Citrix access as needed to the Products via the Internet for the purpose of providing support services and shall permit Citrix to perform the support services called for by this Attachment A. Ordering Activity shall maintain Citrix supported versions of required third party software, if any.
- b. **Named Contacts.** Ordering Activity shall appoint at least two (2) named contacts within Ordering Activity's organization to serve as contacts between Ordering Activity and Contractor through Citrix and to receive support through Citrix's telephone support center. Ordering Activity's contacts shall have been adequately trained on the Software and shall have sufficient technical expertise, training and experience.

3. EXCLUSIONS.

Notwithstanding anything in this Attachment A to the contrary, Contractor through Citrix shall have no obligation or responsibility to provide any support services relating to problems arising out of or related to (i) Ordering Activity's failure to implement all updates to the Software which are made available to Ordering Activity under this Attachment A; (ii) the failure to provide a suitable installation environment; (iii) Ordering Activity's customization to the operating system or environment that adversely affects the Software; (iv) any alteration, modification, enhancement or addition to the Products performed by parties other than Citrix; (v) use of the Products in a manner, or for a purpose, for which it was not designed; (vi) accident, abuse, neglect, unauthorized repair, inadequate maintenance or misuse of the Products; (vii) operation of the Products outside of environmental specifications; (viii) interconnection of the Software with other software products not supplied by Citrix; (ix) use of the Software on any systems other than the specified hardware platform for such Software; or (x) introduction of data into any database used by the Software by any means other than the use of the Software. Notwithstanding anything else contained in this Attachment A to the contrary, Citrix shall only be obligated to provide support for eligible Products as indicated in the Citrix Appliance End of Life Policy available www.citrix.com. This website reference is for informational purposes only.

4. OWNERSHIP AND USE; WARRANTY DISCLAIMER.

- a. **Ownership and Use.** All Updates and other changes, improvements, bug fixes or other modifications to the Software provided under this Attachment A shall be deemed to be included within the Software and shall be subject to the terms and conditions of this Attachment A except that they are not covered by the warranty. With respect to installation and consulting services relating to the Product purchased from Contractor, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and all other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the property of Contractor, subject to a worldwide, nonexclusive license to Contractor for internal use.

- b. **Warranty and Warranty Disclaimer.** Contractor shall use all reasonable commercial efforts to provide the support, installation and consulting services requested by Ordering Activity under this Attachment A in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Ordering Activity shall be resolved. OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY CONTRACTOR, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND CONTRACTOR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS INCLUDING WITHOUT LIMITATION THOSE ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE AND THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SATISFACTORY QUALITY.

HOW TO CONTACT CITRIX TECHNICAL SUPPORT

If Ordering Activity purchased maintenance for Citrix products, Ordering Activity can contact Citrix Technical Support either by phone or via the Internet. In order to contact Citrix Technical Support each individual named contact must have a valid support agreement number in place. If Ordering Activity purchased maintenance and Ordering Activity have been designated a named contact, Ordering Activity should have received Ordering Activity's individual agreement number via email. However, if Ordering Activity has not received Ordering Activity's agreement number, please send an email to Contractor through Citrix (addresses provided below) with your name, company name, phone number and serial number of the unit.

Phone

- From North America, Latin America, and the Caribbean, please dial: 1-800-424-8749 or (954) 267-2599
- From EMEA (Europe, Middle East, Africa), please dial: 00353-1-805-5000
- From APAC (Australia, New Zealand and Asia), please dial: +61-2 8870 0899
- From Japan, please contact your distributor directly.

Ordering Activity may also find Ordering Activity's country specific toll free phone number by going to the following website address:
www.citrix.com/English/ss/supportContacts.asp

Internet

- Log on to www.mycitrix.com
- Navigate to the Toolbox and select "My Support". This will direct Ordering Activity to the eService Self Service Homepage. This view provides links with associated descriptions in a user friendly web-based format. These links will include Service Requests, Agreements and Returns / Exchange Orders. Ordering Activity can find more details as you navigate through each link.

Email

- From North America, Latin America and the Caribbean, please use techsupport_na@citrix.com
- From EMEA (Europe, Middle East, & Africa), please use techsupport_emea@citrix.com
- From APAC (Australia, New Zealand and Asia), please use techsupport_apac@citrix.com
- From Japan, please contact your distributor directly.

CITRIX APPLIANCE MAINTENANCE PROGRAM OVERVIEW

As an Ordering Activity, Ordering Activity is entitled the following services as described in this document to the extent Ordering Activity has ordered and paid in full the Annual Fee for the applicable service.

Ordering Activity puts confidence in Contractor through Citrix when Ordering Activity installed products in Ordering Activity's network infrastructure. Citrix wants that confidence to last, and is committed to making sure Ordering Activity's Citrix Appliance is successfully implemented and continues to work to provide a robust solution for Ordering Activity's applications. The Citrix Appliance Maintenance Program has been designed to help sustain, grow and enhance our products within Ordering Activity's infrastructure, so Ordering Activity can be assured of their performance every step of the way.

The levels of maintenance that are available for the Citrix products are:

Bronze (not currently available for Citrix Access Gateway)

- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes
- 2 named contacts
- Standard replacement for materials (ships within 10 business days after issuing the RMA number*)

Silver

- Unlimited incidents during each one-year term
- Standard business hours (see technical support coverage hours below)
- One year of software updates and bug fixes

- Assigned Support Account Manager for non-technical Relations Management Services
- 4 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

Gold

- Unlimited incidents during each one-year term
- 24 x 7 coverage hours
- One year of software updates and bug fixes
- Assigned Support Account Manager for non-technical Relations Management Services
- 6 named contacts
- Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

* Please note that in countries where regulation requires export approval documentation in advance of RMA shipment, the time for shipment may be longer.

Citrix Appliance Technical Support Coverage Hours

	Bronze	Silver	Gold
North America, Latin America, and the Caribbean	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	24 x 7
Asia (excluding Japan*)	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	24 x 7
Australia & New Zealand	8 a.m. to 6 p.m. AEST, Monday - Friday	8 a.m. to 6 p.m. AEST, Monday -Friday	24 x 7
Europe, Middle East, & Africa	8 a.m. to 6 p.m. GMT, Monday - Friday	8 a.m. to 6 p.m. GMT, Monday - Friday	24 x 7

*Ordering Activities in Japan should contact their local distributor for technical support coverage.

Contractor through Citrix's tiered Citrix Appliance Maintenance Program allows Ordering Activity to select the level of service that is best for Ordering Activity. Citrix's goal is to continue to earn Ordering Activity's confidence and to exceed Ordering Activity's expectations. If Ordering Activity has not already chosen a Citrix Appliance Maintenance Program, please review the levels above.

Coho Data
530 Lakeside Dr, Suite 100
Sunnyvale, CA 94085

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

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

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- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

COHO DATA

COHO DATA LICENSE, WARRANTY AND SUPPORT TERMS

1. **The Software.** "Software" means the program modules, feature sets and features of the Coho-supplied software for which Ordering Activity has paid the applicable license fees to Contractor, or which was embedded by Coho in equipment that Ordering Activity purchased from Contractor. "Software" also includes any Coho-supplied updates, upgrades, additions or replacements that are subsequently embedded in or loaded onto the equipment.
2. **License Grant.** Subject to payment of the applicable fees and the limitations and restrictions set forth herein, Coho grants to Ordering Activity a non-exclusive and non-transferable license, without right to sublicense, to use the Software solely in executable form only and solely for Ordering Activity's internal business purposes, subject to the following use restrictions:
 - a. Ordering Activity shall use Software solely as embedded in, and for execution on, Coho equipment originally purchased by Ordering Activity from Contractor.
 - b. The paper or electronic user documentation that accompanies the Software and/or the particular licenses purchased by Ordering Activity may specify limits to Ordering Activity's use of the Software. Ordering Activity's use of the Software shall be subject to all such limitations and purchase of all applicable licenses.

The foregoing license is not transferable or assignable by Ordering Activity except as expressly authorized by Coho. No license is granted herein to any user who did not originally purchase the applicable license(s) for the Software from Contractor. All rights not specifically granted herein are reserved by Coho.

3. **Use Prohibitions.** Notwithstanding the foregoing, the license provided herein does not permit the Ordering Activity to, and Ordering Activity agrees not to and shall not: (a) modify, unbundle, reverse engineer, or create derivative works based on the Software; (b) make unauthorized copies of the Software (except as necessary for backup purposes); (c) rent, sell, transfer, or grant any rights in and to any copy of the Software, in any form, to any third party; (d) remove any proprietary notices, labels, or marks on or in any copy of the Software or any product in which the Software is embedded; (e) distribute any copy of the Software to any third party, including as may be embedded in Coho equipment sold in the secondhand market; (f) use any 'locked' or key-restricted feature, function, service, application, operation, or capability without first purchasing the applicable license(s) and obtaining a valid key from Coho, even if such feature, function, service, application, operation, or capability is enabled without a key; (g) distribute any key for the Software provided by Coho to any third party; (h) use the Software in any manner that extends or is broader than the uses purchased by Ordering Activity from Contractor; (i) use the Software on non-Coho equipment; (j) use the Software (or make it available for use) on Coho equipment that the Ordering Activity did not originally purchase from Contractor; (k) disclose the results of testing or benchmarking of the Software to any third party without the prior written consent of Coho; or (l) use the Software in any manner other than as expressly provided herein.
4. **Ownership.** Coho and Coho's licensors, respectively, retain ownership of all right, title, and interest (including copyright) in and to the Software, associated documentation, all copies of the Software, and all intellectual property rights therein or thereto. Nothing in this Agreement constitutes a transfer or conveyance of any right, title, or interest in the Software or associated documentation, or a sale of the Software, associated documentation, or copies of the Software. Ordering Activity understands and agrees that Coho may, automatically or through other means, collect and use diagnostic and technical information related to Ordering Activity's use of the Software, including without limitation system performance, capacity usage, hardware faults, and other information of a similar nature ("Diagnostic Data"). The Software may transmit Diagnostic Data to Coho on a daily or other periodic basis, or upon a failure or crash of the Software. The Diagnostic Data does not include any user data contained within a storage device. Ordering Activity agrees that Coho may use the Diagnostic Data to support Ordering Activity's use of the Software or related equipment, improve Coho's products or to provide customized services or technologies to Ordering Activity. Coho may disclose the Diagnostic Data to others in an aggregated form that does not personally identify Ordering Activity or link such Diagnostic Data to Ordering Activity.

5. **Warranty and Disclaimer.**
 - a. **Limited Warranty.** Coho warrants that for ninety (90) days from the date of original purchase, the media (e.g., CD ROM), if any, on which the Software is contained will be free from defects in materials and workmanship. Coho's and its suppliers' liability and Ordering Activity's remedy for any breach of the foregoing warranty shall be replacement of the defective media in which the Software is contained. Ordering Activity must return the defective media to Coho. This limited warranty is void if the defect has resulted from accident, abuse, or misapplication. Any replacement media will be warranted for the remainder of the original warranty period.
 - b. **Disclaimer.** Nothing in this Agreement shall give rise to any obligation to support the Software. Technical support services may be purchased separately. Any such support shall be governed by a separate, written support services agreement. Except for the limited warranty set forth in Section 5.a above, THE SOFTWARE IS PROVIDED "AS IS" AND COHO MAKES NO WARRANTY AS TO USE OR PERFORMANCE. EXCEPT TO THE EXTENT SUCH EXCLUSIONS OR LIMITATIONS ARE PROHIBITED BY APPLICABLE LAW, COHO, ITS SUPPLIERS AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION OR REPRESENTATION (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. Coho products and Software are not designed or intended for use in (i) the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; or (iii) any life-saving, life-support or life-critical medical equipment, and Coho disclaims any express or implied warranty of fitness for such uses. Ordering Activity assumes responsibility for selecting the

Software to achieve Ordering Activity's intended results, and for Ordering Activity's use thereof. WITHOUT LIMITING THE FOREGOING PROVISIONS, COHO MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, FREE OF VULNERABILITY TO INTRUSION OR ATTACK, OR FREE FROM INTERRUPTIONS OR OTHER FAILURES, OR THAT THE SOFTWARE WILL MEET ORDERING ACTIVITY'S REQUIREMENTS.

6. **Reserved.**
7. **Reserved.**
8. **Reserved.**
9. **Export.** Ordering Activity agrees to comply with all applicable export laws and restrictions and regulations of any United States and any applicable foreign agency or authority, and not to export or re-export the Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. The version of the Software supplied to Ordering Activity may contain encryption or other capabilities restricting Ordering Activity's ability to export the Software without an export license.
10. **Commercial Computer Software.** The Software and any related documentation are each a "commercial item" as that term is defined at FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and are provided to the U.S. Government only as commercial end items. Government end users acquire the rights set out in this Agreement for the Software and related documentation consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, the terms set forth in DFARS 227.7202. Use of the Software and related documentation is further restricted by the terms and conditions of this Agreement. For the purposes of any applicable government use, the Software and Documentation were developed exclusively at private expense, and are trade secrets of Coho or Coho's Licensors, as applicable, for the purpose of any Freedom of Information legislation or any other disclosure statute, regulation or provision.
11. **Reserved.**

CommVault Systems, Inc.
2 Crescent Place
Oceanport, NJ 07757

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

COMMVAULT

COMMVAULT LICENSE, WARRANTY AND SUPPORT TERMS

CommVault[®] Simpana[®] Software Release 10.0.0

(including Microsoft[®] SQL Server[®] 2008 Enterprise Edition, Microsoft[®] SQL Server[®] 2008 R2 Enterprise Edition, Microsoft[®] SQL Server[®] 2012 Enterprise Edition, SQL Server[™] 2008 Express Edition, SQL Server[™] 2008 R2 Express Edition, SQL Server[™] 2012 Express Edition and Windows Pre-Installation Environment)

End User License Agreement

This EULA, grants the Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time, a non-exclusive license to use the Software under the terms and conditions stated herein. Ordering Activity agrees that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided to Ordering Activity, on a when and if available basis, shall be governed by the terms and conditions, including the limited warranty, exclusive remedies and limitations of liability provisions, contained in the Schedule Contract and this EULA. Except as otherwise provided herein, the license granted herein shall be perpetual provided Ordering Activity complies with the terms hereof. This EULA shall be in effect until terminated except as expressly otherwise provided herein. Ordering Activity may terminate this EULA at any time by destroying all copies of Software and corresponding documentation. Upon termination, Ordering Activity must destroy all copies of Software in its possession or control.

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EXHIBIT A - Global Customer Support Services

1 Overview

Welcome to CommVault Customer Support Services!

NOTE: Not all services are available for all products or customers*. CommVault's Customer Support Services options help you make the most of your investment in the CommVault software suite. We want you to get the most from your products throughout their life. CommVault offers different Support options based on your business requirements in order to enhance the value of your support investment and meet the needs of your business. Ordering Activity also get access to a variety of other services that are valuable throughout the life of your products:

Product Updates / Upgrades

- Maximize performance with the latest versions of your licensed products
- Service Pack, Maintenance Pack, and Hot Fix availability
- New update notifications through the Support Notification Service

Online Services

- Access to the CommVault eSupport Portal with features specifically designed for our Support customers
- Online Knowledge Base for easy access to solutions
- Online Forum for real time discussion with CommVault experts and CommVault end users
- Online documentation and FAQs for each product
- Notification of changes in open support service requests

- Telephone access to skilled engineers
- Support that is available 24/7, whenever a problem may occur
- Unlimited number of calls to CommVault Customer Support
- Regular updates on the status of open cases
- Support engineers who are certified with high-skill security qualifications
- Remote debugging and re-configuration tools for rapid fault resolution

Other Features

- Product Upgrade Validation Automation Tools
- CommVault Support Log Upload Management
- Product Compatibility and Interoperability Matrices
- CommVault ROMS portal

2 Support Offerings

2.1 CommVault Customer Support Programs

CommVault has several support options; each is designed to meet the needs and requirements of a wide range of customers. These plans maximize your productivity, letting you focus on your core business.

2.2 Support Programs

As a CommVault customer, you rely on us to deliver the best software and support so that you can manage your data with the utmost results. To that end, we listen to your needs and anticipate your future requirements. We take this knowledge and design the best support programs to meet your needs at any level, to maximize your productivity and lower your costs.

Business Critical Support: Global Platinum

Business Critical Support: Platinum

Business Critical Support: Gold +

Business Critical Support: Gold

Business Critical Support: Bronze

Premium Support

Standard Support

2.2.1 Standard Support

The Standard package provides broad business coverage with direct access to the CommVault Technical Assistance Center and is designed to support the majority of customer's needs. This package includes:

- Access to the CommVault Technical Assistance Center on business days (Monday - Friday), excluding statutory holidays, between the hours of 7 AM to 7 PM (local time) for the location where the software is installed.
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software update fixes
- Web E-Support such as Incident Management, Knowledge Database, CommVault Books Online and the CommVault Forum
- Reports provided upon request

2.2.2 Premium Support

The Premium package is designed to address mission critical environments since it provides a comprehensive 24x7 coverage period. This package includes:

- Around-the-clock access to the CommVault Technical Assistance Center (including holidays)
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software updates product enhancements and new releases (when available)
- Web E-Support such as Incident Management, Knowledge Database, CommVault Books Online and the CommVault Forums
- Reports provided upon request

2.2.3 Business Critical Support (BCS)

BCS is a valuable support service for organizations which require a superior level of support in addition to their Premium Maintenance contract. Benefits of this service include priority case handling, accelerated service level agreement targets (SLA's), access to a Support Account Manager (SAM) and access to CommVault's Remote Operations Management Services (ROMS).

Recognizing that customers have differing requirements based on their own unique frameworks, CommVault offers a choice of five levels of BCS, with each ascending level providing an increased scope of delivery.

2.2.3.1 Bronze

BCS Bronze is tailored towards customers who require Priority Ticket Handling during normal business hours.

This service provides access to an office-based Support Account Manager and a priority available Customer Support Engineer (CE) on a 12x5 basis, as well as access to our Remote Operations Management Service (ROMS).

Severity Level Agreement Targets

Resources work towards the successful achievement of SLAs as per the targets outlined in section 2.2.4.

Customer Support Engineer (CE)

The CE works to provide answers, solutions or a work-around for BCS customer CommVault issues.

The CE:

- Will be assigned responsibility to accept, analyze, resolve or escalate new issues.
- Will manage issues using BCS Bronze Service Level Agreements.
- Will prioritize all BCS issues before non-BCS clients
- Will keep issue current of status and advise client and Support Account Manager of regular updates to status

Support Account Manager (SAM)

The SAM works to ensure SLA success and manage escalation and critical care instances.

- Monitors open issues to ensure there is continued activity towards prompt resolution
- Communicates directly with customer management to update and prioritize on high severity issues
- Directs issue escalation through Focus Groups and Engineering to ensure continued ownership

Remote Operations Monitoring Service (ROMS)

CommVault ROMS is a leading management tool for monitoring and reporting on your CommVault Environment.

2.2.3.2 Gold

BCS Gold is aimed at customers who require Priority Ticket Handling on a 24x7 basis.

This service provides access to a Support Account Manager (SAM), a priority available Customer Support Engineer (CE) and a Business Critical Technical Account Manager (TAM).

Severity Level Agreement Targets

Resources work towards the successful achievement of SLAs as per the targets outlined in section 2.2.4.

Customer Support Engineer (CE)

The CE works to provide answers, solutions or a work-around for BCS customer CommVault issues. The CE:

- Will be assigned responsibility to accept, analyze, resolve or escalate new issues.
- Will manage issues using BCS GOLD Support Service Level Agreements.
- Will prioritize all BCS issues before non-BCS clients.
- Will keep issue current of status and advise client and SAM of regular updates to status.

Support Account Manager (SAM)

The SAM works to ensure SLA success, provide reporting, and manage escalation and critical care instances.

- Monitors open issues to ensure there is continued activity towards prompt resolution.
- Communicates directly with customer management to update and prioritize on high severity issues.
- Directs issue escalation through Focus Groups and Engineering to ensure continued ownership.
- Presents reports.

Technical Account Manager (TAM)

The TAM is a strategic technical contact who acts as a liaison between the customer and CommVault Customer Support, Product Management and Development. The TAM delivers tactical CommVault guidance and will attend site twice during the maintenance period.

Reporting

Working with the BCS Customer's fiscal or operation calendar, the SAM will present data on quarterly activity.

- Reports on quarterly success for SLA response and resolution
- Conducts at least one Quarterly Summary at the customer site.

Remote Operations Monitoring Service (ROMS)

CommVault ROMS is a leading management tool for monitoring and reporting on your CommVault Environment.

2.2.3.3 Gold+

BCS Gold+ builds on the BCS Gold service by offering more stringent BCS SLA targets, optimized escalation processes and greater access to the TAM in addition to the offerings outlined in section 2.2.3.2.

Severity Level Agreement Targets

Resources work towards the successful achievement of SLAs as per the targets outlined in section 2.2.4.

- Severity 0 (Zero) designed to support Enterprise Data Centers

Customer Support Engineer (CE)

The CE works to provide answers, solutions or a work-around for BCS customer CommVault issues.

The CE:

- Will be assigned responsibility to accept, analyze, resolve or escalate new issues.
- Will manage issues using BCS Gold+ Level Agreements
- Will prioritize all BCS issues before non-BCS clients
- Will keep issue current of status and advise client and SAM of regular updates to status

Support Account Manager (SAM)

The SAM works to ensure SLA success, provide reporting, and manage escalation and critical care instances.

- Monitors open issues to ensure there is continued activity towards prompt resolution.
- Communicates directly with customer management to update and prioritize on high severity issues.
- Directs issue escalation through Focus Groups and Engineering to ensure continued ownership.
- Presents reports.

Technical Account Manager (TAM)

The TAM is a strategic technical contact who acts as liaison between the customer and CommVault Customer Support, Product Management and Development. The TAM delivers tactical CommVault guidance and will work on the customer's issues on up to 10 days per Quarter.

Reporting

Working with the BCS Customer's fiscal or operation calendar, the SAM will present data on quarterly activity.

- Reports on quarterly success for SLA response and resolution
- Conducts at least one Quarterly Summary at the customer site

Remote Operations Monitoring Service (ROMS)

CommVault ROMS is a leading management tool for monitoring and reporting on your CommVault Environment.

2.2.3.4 Platinum and Global Platinum

The BCS Global Platinum Support service is intended for those customers with multiple CommCell environments whereby the CommServes are located in different geographies. This model best supports global entities with multiple large locations and physically separate CommCells.

The BCS Platinum Support service provides Platinum level support service SLAs for customers with locations confined to a single geographic region.

Severity Level Agreement Targets

Resources work towards the successful achievement of SLAs as per the targets outlined in section 2.2.4

- Severity 0 (Zero) designed to support Enterprise Data Centers

Customer Support Engineer (CE)

The CE works to provide answers, solutions or a work-around for BCS customer CommVault issues.

The CE:

- Will be assigned responsibility to accept, analyze, resolve or escalate new issues.
- Will manage issues using BCS Platinum Service Level Agreements
- Will prioritize all BCS issues before non-BCS clients
- Will keep issue current of status and advise client and SAM of regular updates to status

Support Account / Regional Technical Account Manager (SAM /RTAM)

The Support Account Manager (remote) and Regional Technical Account Manager work to ensure SLA success, provide reporting, and manage escalation and critical care instances.

- Monitors open issues to ensure there is continued activity towards prompt resolution
- Communicates directly with customer management to update and prioritize on high severity issues
- Engages BCS customer on proactive support management
 - Patch and Update management
 - Change Control monitoring

- Strategic vision
- Conduct monthly scheduled onsite engagement with Customer personnel (via RTAM) to review and mitigate customer procedures that drive Support issues
- Directs issue escalation through Focus Groups and Engineering to ensure continued ownership
- Presents reports
- Performs on-site conferencing at least one visit and as needed

Reporting

Working with the BCS Customer's fiscal or operation calendar, the SAM will present data on quarterly activity.

- CommVault ROMS installed to provide customer with unified GOLD LEVEL Client alert monitoring and job results data.
- Organizes weekly conference call with customer principals to discuss issue status and path to resolution
- Compiles and reports to customer management with the Monthly Executive Summary
 - Demonstrates SLA response and resolution success
 - Provides data trending
 - Job counts
 - CommCell® Health
 - License Usage and Forecasting
- Reports on quarterly success for SLA response and resolution, and overall CommCell® trends
- Provides a Quarterly Executive Summary with the target of delivering 75% of these on site

Remote Operations Monitoring Service (ROMS)

CommVault ROMS is a leading management tool for monitoring and reporting on your CommVault Environment.

2.2.4 Service Levels Response and Resolution Target Matrix

	Standard Support	Premium Support	BCS Bronze Support	BCS Gold Support	BCS Gold+ Support	BCS Platinum Support
SEV0 (Catastrophic)						
Response	NA	NA	NA	NA	15 Min	15 Min
Resolution/Workaround	NA	NA	NA	NA	12 Hours	12 Hours
SEV1 (Critical)						
Response	1 Hour	1 Hour	1 Hour	1 Hour	30 Min	30 Min
Resolution/Workaround	24 Hours	24 Hours	24 Hours	24 Hours	24 Hours	24 Hours
SEV2 (High)						
Response	2 Hours	2 Hours	2 Hours	2 Hours	1 Hour	1 Hour
Resolution/Workaround	72 Hours	72 Hours	72 Hours	72 Hours	72 Hours	72 Hours
SEV3 (Medium)						
Response	3 Hours	3 Hours	3 Hours	3 Hours	3 Hours	3 Hours
Resolution/Workaround	20 Days	20 Days	20 Days	20 Days	10 Days	10 Days
SEV4 (Low)						
Response	4 Hours	4 Hours	4 Hours	4 Hours	4 Hours	4 Hours
Resolution/Workaround	NA	NA	NA	NA	NA	NA

2.2.5 Customer Support Quality Assurance

CommVault is committed to providing best in class technical support and we drive our customer satisfaction through a variety of metrics to guide us to achieve that goal. Industry standard measurements of time to respond, first contact resolution and time to solve are cornerstones of our support model.

Outside of internal objectives we also proactively solicit feedback from our user base for each incident logged with CommVault support in the form of a survey. This survey includes a brief questionnaire along with a comments section to add remarks about our service quality. Each survey response is reviewed daily by support management and in the event of a poor survey response we will initiate an investigation into the source of customer's dissatisfaction with the support experience. Support management will initiate a call with the customer to cover satisfaction issues that were brought to light in the survey. The outcome of that conversation is reviewed against existing support processes and adjustments are made as needed.

CommVault is also committed to improving our products and we are always open to customer suggestions, and even requests, as to ways we can best accomplish this. By providing reports regarding customer's use of the software, including results, comments or suggestions to CommVault (collectively, the "Feedback"), customer agrees that CommVault may use and disclose the Feedback in any manner CommVault chooses, provided that CommVault ensures the confidentiality of customer's identity at all times. CommVault shall own all intellectual property rights related to the Feedback and its use.

3 Contacting Support

Prior to contacting support it is highly recommended that customers search for possible solutions via the Web on our Support Portal, "Maintenance Advantage" and/or load the latest service pack and updates. If the problem persists, collecting log files along with having the latest Service Pack and updates installed will help expedite your issue. Not doing so can cause longer resolution times.

Please be aware that CommVault Technical Support Management reserves the right to close a service call if repeated attempts to contact the end user over the course of three (3) business days have failed to yield a response without reason. If necessary, these Support Incidents can be referenced if a new call for the original incident is required.

CommVault offers three different methods of support:

1. Web Support – Self Service
2. Web Support Submission
3. Telephone Support

3.1 Web Support – Self Service

CommVault's Web Support is provided via our Support Portal called Maintenance Advantage. Maintenance Advantage is provided to customers who have a current and active maintenance contract. If you meet this requirement and you do not have a Maintenance Advantage login and password please send an email to the following the appropriate location and provide your CommCell-ID along with your contact information and you will be notified via email of your login and password within 24 - 48 hours: support@commvault.com

Maintenance Advantage contains a set of powerful tools to enable CommVault software customers to better optimize and maintain their deployments. The section includes:

- Knowledge Base
- CommVault's Customer Forum
- Service Packs and Hotfix Update Downloads, when and if available
- Technical FAQs
- Tips and Techniques to achieve better performance
- Configuration and deployment guidelines
- Supported hardware and software compatibility matrixes
- Troubleshooting Guides, and other valuable resources

3.2 Web Support Submission

Customers can submit an incident via the web by logging into Maintenance Advantage and clicking on the Incident Management link. From there customers will have the ability to view, update and close incidents.

Web Submitted incidents are responded to using the following guidelines:

Severity 0 and Severity 1 - (SEV0 and SEV1) incidents cannot be opened via the eSupport site
Severity 2 (SEV2) – 2 Hour Response
Severity 3 (SEV3) – 3 Hour Response
Severity 4 (SEV4) – Next Business Day

Once the online form is submitted, a ticket will automatically be generated as well as email notification which will include the Ticket number and a link to upload logs via the HTTP Log up-loader. In a majority of the support cases logs will be required in order to troubleshoot and analyze the problem reported. Uploading logs in a timely manner will help expedite the troubleshooting process.

3.3 Telephone Support

CommVault has four Main Global Customer Support locations; Oceanport New Jersey; Reading, UK; Sydney, Australia; and Beijing, China. The CommVault Technical Assistance Centers are staffed by highly skilled professionals who are available 24 hours a day / 7 days a week (based on your warranty and contract support hours).

North America Toll Free # (877) 780-3077
North America Direct Toll# (732) 571-2160

Mexico 01-800-681-1581
Brazil 0-800-892-2288

EMEA:

Belgium 0800-79392
France 0800-918893
Denmark 8088-9260
Germany 0800-1012330
Ireland 1-800-608178
Israel 1-80-9494177
Italy 0800-782147
Netherlands 0800-0227402
Portugal 800-8-14516
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Saudi Arabia 800-8444077
 South Africa 080-09-81256
 Spain 0900-991600
 Sweden 0200-896316
 Switzerland 0800-836023
 United Arab Emirates 800-04442334
 United Kingdom 0800-9171424
 Other EMEA Countries +441189522030

APAC:

Australia 1300 368 528
 China 400-818-5908
 India 1800-419-2951
 Japan 0120-938-003
 Korea 00-308-13-1763
 Malaysia 1-800-813-686
 New Zealand 0800 447 342
 Singapore 800-101-2206
 Thailand 001-800-13-204-2904

3.3.1 Submitting an Incident

When contacting support, customers should be prepared to provide the following information. Failure to provide this information can result in delays.

- User name and Contact Information
- CommCell ID
- Company Name
- Description of the problem
- Agent type, Version and Update Level
- Any other pertinent information such as failure reason and time of failure.

Severity levels are mutually agreed upon between customer and support representative. (See: Severity Level Definitions in section 3.4). For Severity 1-Critical issues customer must provide valid business case reason for a Severity 1-Critical call classification.

3.4 Service Packs and Hotfix Updates

Customers can download Service packs and hot fixes via Maintenance Advantage. Our Service Packs are a roll up of all released updates up to a certain point and time. Hotfixes are fully certified updates that are not part of the last Service Pack. CommVault notes that these updates are offered on a "when-and-if available" basis only and do not follow a specific release schedule.

3.5 Alerts and Notifications

In order for customers to receive alerts they must edit their Maintenance Advantage user profile. There are two methods to receive alerts, one manual via ad hoc alerts sent by Technical Support or automated alerts via setting in your user profile.

Manual Alert Notifications – Ordering Activity can subscribe yourself to these alerts by selecting **Yes** on the Receive Update Alert Messages portion of the profile. Once you choose to receive alerts please make sure the Alert Distribution email field contains the email you wish alerts to be sent to. We recommend creating an alias distribution address so that more than one person can be notified such as a primary and a backup.

Automated Alert Notifications – The automated alert notification feature will automatically send notifications on what you selected. Ordering Activity can select to receive Critical Alerts, Service Pack Alerts and/or Critical Updates only. Ordering Activity will then need to select the frequency either weekly or monthly and the day of the week you wish to receive those alerts. These alerts will send notification on updates posted since the last notification.

3.6 Severity Level Definitions

Severity Level Definitions and Examples:

BCS Gold+ BCS Platinum

0-Catastrophic

This severity level is reserved for CommVault Business Critical Support Customers. This severity is used to indicate that all CommVault components are inoperable and no data movement operations are possible. Examples of SEV0-Critical calls are:

- Complete outage to CommServe. Multiple Server outages/rebuilds issues.
- Disaster Recovery Event (not a DR Test)

1-Critical This severity should be used to indicate that a major component is down or having a serious problem that it is impacting business. Examples of SEV1-Critical calls are:

- CommServe® is not functioning and server backups or restores are not possible
- Mission Critical Database Restores (Exchange, SQL, Oracle, Informix etc.) impacting customers business

- Mission Critical Server Restore/Rebuild impacting customers business

2-High This severity should be used to indicate that a major component has problems that degrade the ability to meet the needs of the business. Examples of SEV2-High calls are:

- Critical Server Backup failures
- Directory/Folder and File level Restore failures.

3-Medium This severity should be used to indicate intermittent problems that do not impact the immediate production needs of the business.

Examples of SEV3-Medium calls are:

- Client installation issues
- Media Management issues
- Operational problems.

4-Low This severity should be used to report a defect or inconsistency in the product or request an enhancement to the product.

3.7 Problem Escalation:

The following section describes the actions that will be taken towards a resolution of Severity 1-Critical issues that are not resolved, and/or where no progress is being made nor a workaround provided within the response target goal time:

- A Tier 2 Engineer will be assigned to manage and coordinate efforts to work towards a resolution. Managers from the following departments will be notified: Technical Support, Engineering, Sales and Regional Technical Services.
- The Tier 2 Engineer will coordinate a conference call with the user and all necessary personnel from Support and Engineering departments to discuss the viability of providing a workaround until a permanent solution can be achieved. Regular updates on the progress of the issue will be provided to the user. All reasonable efforts to resolve the issue remotely will be taken, such as remote access to the problem site, replication of the problem in a support lab, or utilization of information gathered through the installation of diagnostic updates. The majority of problems are resolved remotely using phone support along with remote access tools.
- If all remote troubleshooting attempts are deemed unsuccessful, then an on-site engineer can be provided until the problem is resolved. The on-site engineer fees would comprise of the current daily billable rates as well as travel expenses.

3.8 Incident Escalation:

While CommVault support makes every effort to meet our customer's expectations, occasionally a situation may arise where an incident may need to be expedited or criticality may have changed. In cases where you feel additional attention or further escalation is required, the following procedure should be followed:

- Contact the Customer Support Hotline providing your incident-id number and ask to have the incident escalated. Please provide the reason for escalation so that the incident can be handled accordingly by our engineers.
- Ordering Activity may also request to speak with a Supervisor or Manager. In most cases a Supervisor or Manager will return your call within one hour. Ordering Activity will have the opportunity to explain the situation currently being faced and we will assist in getting the situation rectified.

Please refer to the Global Support and Services Resource Allocation page, or online, for a list of Toll Free numbers to contact your local Support Center. <http://services.commvault.com/Support/TelephoneSupport>

4 Product Updates

Keeping Ordering Activityr Products Current

A current CommVault Maintenance Agreement entitles you to the latest versions of your licensed CommVault products, Service Packs, Maintenance Packs, hotfixes, and more.

Download Software Packages

CommVault makes all of its software packages available online. To access the most current versions of CommVault's Software Suite, log into the CommVault eSupport site and click **Electronic Software Distribution, Service Pack** or **Additional Platform Support Packages** under the **Downloads and Packages** tab. Different release versions are accessed by selecting the Software Version at the top right of the eSupport Site page.

Download Software Updates

CommVault constantly enhances its products for resiliency and performance. Regular updates to your deployed CommVault environment ensures optimized operating efficiency for your CommCell(s) and minimizes the possibility of encountering an issue that has already been addressed in a Service or Maintenance Pack.

To check for available software updates (loose updates, Service Packs, Maintenance Packs), log into the CommVault eSupport site and click **Software Updates** under the **Product Support** tab. Ordering Activity can sort the list of Updates by Major Release and Product family.

Weekly Update Alert Notice

The Weekly Update Alert Notice delivers to you via email product information, update and upgrade notifications, as well as critical alerts that may require immediate attention. This information helps you get the most out of your CommVault investment by keeping you up to date. For more information visit the URL noted below and update your User Profile for alerting: https://services.commvault.com/mainadv/profile_editor.asp

5 Support Entitlement and Maintenance Renewals

5.1 Support Entitlement

In order to receive maintenance and support services, including updates and upgrades, Customers must maintain the same level of active maintenance and support on all software licenses within their software configuration.

5.1.1 Reserved.

5.1.2 Product Obsolescence

CommVault is committed to providing all customers with one (1) year advanced notification of the obsolescence date of any CommVault product. At the time a product is declared obsolete, CommVault will also notify all customers of any specific maintenance arrangements associated with any products that have been declared obsolete. Customers can view the list of obsolete products on the Web at

http://www.commvault.com/product_support.asp

6 Product License Registration

6.1 Reserved.

Global Support and Services Resource Allocation

6.2 Worldwide Regional Locations

CommVault Location	WW HQ	North America	Latin America	APJ	EMEA	China	India
Services	X	X	X	X	X	X	X
Support Center	X	X		X	X	X	
Engineering	X	X					X
Management	X	X	X	X	X	X	X

United States

Western Region (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY, Mexico)

Central Region (AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, OK, SD, TX, WI)

Eastern Region (AL, CT, DE, FL, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV)

Canada

National Capital Region (Ottawa/Hull, Federal Government)

Western Region (British Columbia, Alberta)

Central Region (Ontario, Manitoba, Saskatchewan)

Eastern Region (Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland)

APAC

(Bangladesh, Bhutan, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, South Korea, Vietnam, Philippines, Republic of Korea, Taiwan, Singapore, Thailand, Australia, New Zealand, Papua New Guinea)

EMEA

FRANCE

SOUTHERN EUROPE, MIDDLE EAST, & AFRICA

UNITED KINGDOM & IRELAND

GERMANY, SWITZERLAND & AUSTRIA

BELGIUM, NETHERLANDS, LUXEMBOURG (BENELUX)

SWEDEN, NORWAY, DENMARK & FINLAND

SPAIN, ITALY, & PORTUGAL

SOUTH AFRICA

MIDDLE EAST

7 Resource Directory

7.1 Department and Contact Information

CommVault Corporate Office Oceanport, New Jersey 1-732-870-4000

CommVault Technical Support

North America Toll Free # (877) 780-3077

North America Direct Toll# (732) 571-2160

Mexico 01-800-681-1581

Brazil 0-800-892-2288

EMEA:

EC America, Inc.

a subsidiary of  immixGroup

Belgium 0800-79392
France 0800-918893
Denmark 8088-9260
Germany 0800-1012330
Ireland 1-800-608178
Israel 1-80-9494177
Italy 0800-782147
Netherlands 0800-0227402
Portugal 800-8-14516
Russia 8-800-100-9423
Saudi Arabia 800-8444077
South Africa 080-09-81256
Spain 0900-991600
Sweden 0200-896316
Switzerland 0800-836023
United Arab Emirates 800-04442334
United Kingdom 0800-9171424
Other EMEA Countries +49-208-468-4650

APAC:

Australia 1300 368 528
China 400-818-5908
India 1800-425-2951
Japan 0120-938-003
Korea 00-308-13-1763
Malaysia 1-800-813-686
New Zealand 0800 447 342
Singapore 800-101-2206
Thailand 001-800-13-204-2904

Product License Registration

North America/APAC: ProdReg@commvault.com
EMEA: Licensekey@commvault.com

Maintenance Advantage

<http://www.commvault.com/mainadv.asp>

Service Contracts

US: servicecontracts@commvault.com
Canada: servicecontractscan@commvault.com
EMEA: servicecontractsemea@commvault.com
APJ: apjservicecontracts@commvault.com

Training

North America: training@commvault.com
EMEA: trainingEMEA@commvault.com
APJ: RegistrarANZ@commvault.com

Professional Services

US: PSUSA@commvault.com
Canada: PSCanada@commvault.com
EMEA: PSEMEA@commvault.com
APJ: PSAustralia@commvault.com

COMMVAULT

ADDITIONAL MANAGED SERVICES PRODUCT DESCRIPTIONS/PRICING INFORMATION:

Part Number	Product/Pricing Additional Descriptions:
MANAGED-SVC-DPE-1T-A	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer, charged on a per-TB price for Data Protection Enterprise (DPE) licensing. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The total price of Managed Services is the sum of the per-TB DPE price and the calculated price for non-DPE licenses. The minimum annual cost for Managed Services is \$40,000. Volume Tiered Pricing 0-100TB
MANAGED-SVC-DPE-1T-B	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer, charged on a per-TB price for Data Protection Enterprise (DPE) licensing. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The total price of Managed Services is the sum of the per-TB DPE price and the calculated price for non-DPE licenses. The minimum annual cost for Managed Services is \$40,000. Volume Tiered Pricing 101-250TB.
MANAGED-SVC-DPE-1T-C	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer, charged on a per-TB price for Data Protection Enterprise (DPE) licensing. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The total price of Managed Services is the sum of the per-TB DPE price and the calculated price for non-DPE licenses. The minimum annual cost for Managed Services is \$40,000. Volume Tiered Pricing 251-400TB.
MANAGED-SVC-DPE-1T-D	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer, charged on a per-TB price for Data Protection Enterprise (DPE) licensing. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The total price of Managed Services is the sum of the per-TB DPE price and the calculated price for non-DPE licenses. The minimum annual cost for Managed Services is \$40,000. Volume Tiered Pricing 401TB +
MANAGED-SVC-CALC-1	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The price of Managed Services is calculated at a rate of 20% of total Commvault software list price up to \$1,500,000 total list price of Commvault software. The total price of Managed Services is the sum of the per-TB DPE price, the calculated price for non-DPE licenses below \$1,500,000. The minimum annual cost for Managed Services is \$40,000.
MANAGED-SVC-CALC-2	An annual subscription that provides proactive management of Commvault software assets on behalf of the customer. This includes normal daily maintenance, upgrades and patching, configuration, and troubleshooting of Commvault software only. Premium Support is required. The price of Managed Services is calculated at a rate of 4.8% of total Commvault software list price above \$1,500,000 total list price of Commvault software. The total price of Managed Services is the sum of the per-TB DPE price, the calculated price for non-DPE licenses above \$1,500,000. The minimum annual cost for Managed Services is \$40,000.

CyberSponse Federal, Inc.
14747 N. Northsight Blvd. Suite 111-115
Scottsdale, AZ 85260

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

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

delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CyberSponse

CyberSponse LICENSE, WARRANTY AND SUPPORT TERMS

ON PREMISE SERVICE AGREEMENT

This On Premise Service Agreement (the "Agreement") sets forth the terms and conditions governing CyberSponse's provision to Customer of a On Premise incident response solution.

ON PREMISE SERVICE AGREEMENT – ADDITIONAL TERMS AND CONDITIONS

1. DEFINITIONS.

"**Affiliate**" means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where "control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).

"**Customer Data**" means all electronic data submitted by Customer to the On Premise Service network.

"**Deliverable**" is any work developed or created by CyberSponse during the course of providing support or Professional Services to Customer. A Deliverable does not include any Customer Data or Customer Confidential Information.

"**Documentation**" means the description of the software contained in the then current software datasheet, a copy of which will be provided by CyberSponse to Customer upon request.

"**On Premise Service**" means CyberSponse software provided, under a limited license, for Customer use on Customer systems.

"**Mobile SDK**" means CyberSponse's mobile/tablet Software Development Kits.

"**Professional Services**" means the activation, implementation, training, and other consulting and professional services provided by CyberSponse to Customer as specified in a Statement of Work.

"**Schedule**" means an ordering document for the On Premise Service that is signed by CyberSponse and Customer. Each Schedule will reference and be subject to this Agreement. The initial Schedule entered into under this Agreement is attached as Schedule A-1.

"**Statement of Work**" or "**SOW**" means the document that describes the Professional Services provided by CyberSponse to Customer. Each Statement of Work will reference and be subject to this Agreement.

"**Subscription Fees**" mean the fees paid by Customer for the right to access and use the On Premise Service and receive Support during the applicable Term.

"**Transaction**" has the meaning specified in the applicable Schedule.

"**Users**" means Customer's employees, agents, contractors, and consultants who are authorized by Customer to use the On Premise Service.

2. PROVISION OF THE ON PREMISE SERVICE.

a. **Availability and Use of the On Premise Service.** CyberSponse will make the On Premise Service available to Customer in accordance with each Schedule entered into by the parties and the then current Documentation. Customer's use of the On Premise Service is limited to its internal business purposes solely for the scope and use limitations specified in the applicable Schedule. b. **Software Provided for Use with the On Premise Service.**

i. **The Application.** Subject to the terms and conditions set forth in this Agreement, CyberSponse grants Customer the nonexclusive, non-transferable, worldwide, internal use only license during the Term to use the application and its component parts.

ii. **Support for the On Premise Service.** CyberSponse will provide Customer with the support described in CyberSponse's then current technical support policy, a copy of which is attached to this Agreement as Exhibit A.

3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF On Premise SERVICE.

- a. **Access to the On Premise Service.** Customer is responsible for (i) all activities conducted under its User logins; and (ii) obtaining and maintaining any hardware, software and network infrastructure ("Customer Equipment") and any ancillary services needed to connect to, access or otherwise

use the On Premise Service, and ensuring that the Customer Equipment and ancillary services comply with the configuration requirements specified in the Documentation.

- b. **Use of the On Premise Service.** Customer agrees to use the On Premise Service solely for its internal business purposes. Customer will not: (i) resell, sublicense, lease, time-share or otherwise make the On Premise Service to any third party; (ii) send or store infringing or unlawful material; (iii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the On Premise Service or the data contained therein; (iv) modify, copy or create derivative works based on the On Premise Service; (v) reverse engineer the On Premise Service; (vi) access the On Premise Service for the purpose of building a competitive product or service or copying its features or user interface; (vii) use the On Premise Service, or permit its use, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without CyberSponse's prior written consent; or (viii) permit access to the On Premise Service, by a direct competitor of CyberSponse.

4. **Reserved.**

5. **INTELLECTUAL PROPERTY OWNERSHIP RIGHTS.**

a. **By CyberSponse.** CyberSponse retains all ownership rights in the On Premise Service (including Cybersponse software and other software utilized to provide the Service), including all intellectual rights in any of the foregoing. CyberSponse grants Customer the nonexclusive, paid-up right to use Deliverables solely for its internal business purposes in connection with its use of the On Premise Service.

b. **By Customer.** Customer retains all ownership rights in the Customer Data, including all intellectual rights in the Customer Data. Customer grants CyberSponse the nonexclusive, paid-up right to use the Customer Data to provide the On Premise Service to Customer, including to monitor and improve the Services.

c. **No Other Rights.** Except as expressly set forth in this Agreement, neither party grants any rights to the other including any license, right or interest in any CyberSponse or Customer trademark, copyright, trade name or service mark.

6. **Reserved.**

7. **WARRANTIES.**

a. **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all other applicable laws in its performance hereunder. b. **By CyberSponse.**

i. **"AS IS" SERVICE.**

A. **DISCLAIMER.** The CyberSponse warrants that the SOFTWARE will, for a reasonable period from the date of your receipt, perform substantially in accordance with CyberSponse; SOFTWARE PRODUCT written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, **THE SOFTWARE AND SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" BASIS. CYBERSPONSE AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE ON PREMISE SERVICE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,**

TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CYBERSPONSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, CYBERSPONSE MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR THE SERVERS UPON WHICH THE ON PREMISE SERVICE IS PROVIDED. CUSTOMERS ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT CUSTOMER SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

B. **NO LEGAL ADVICE.** NOTHING CONTAINED WITHIN THE ON PREMISE SERVICE IS TO BE CONSTRUED AS LEGAL ADVICE. CUSTOMER EXPRESSLY AGREES TO CONSULT WITH ITS OWN INDEPENDENT COUNSEL AND TO NOT RELY ON ANYTHING CONTAINED WITHIN ANY OF CYBERSPONSE'S SYSTEMS, SOFTWARE, SERVICES, OR ANY OTHER COMMUNICATIONS FOR LEGAL MATTERS. ANY REFERENCE WITHIN THE SERVICES OR SOFTWARE TO LAWS OR REGULATIONS ARE FOR GENERAL REFERENCE ONLY. CUTOMER UNDERSTANDS THAT IT HAS THE OPPORTUNITY AT ANY TIME DURING THE USE OF THE SERVICES TO REVIEW ALL POTENTIAL COURSES OF ACTION WITH ITS OWN COUNSEL AND AGREES TO TAKE FULL RESPONSIBILITY FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LEGAL, REGULATORY, AND CONTRACTUAL REQUIREMENTS.

ii. **Warranty for Professional Services.** CyberSponse warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three months after completion the Professional Services will conform to the applicable Statement of Work. In the event of any breach of the foregoing warranty, CyberSponse will re-perform the Professional Services or, if CyberSponse is unable to do so, return the fees paid to CyberSponse for the nonconforming Services.

8. **RESERVED.**

9. **RESERVED.**

10. **RESERVED.**

11. **RESERVED.**

12. **RESERVED.**

**Section - EXHIBIT A TO
ON PREMISE SERVICE AGREEMENT**

. CyberSponse Support Policies

CyberSponse provides support for the On Premise Service as described in this Exhibit. **Communication**

Issues or problems (for convenience, each is referred to as an “issue”) with the On Premise Service are reported via the web-based customer support tool.

In the event the web-based customer support tool is unavailable, the path outlined in the Escalation Section may be used to seek assistance from CyberSponse.

Severity Level Definitions / Response Time Targets / Resolution Resolution of reported issues with the On Premise Service will depend upon a complete understanding of the variables unique to each situation. CyberSponse will provide routine updates on resolution efforts.

Level / Impact	Definition	Initial Response Target
Severity 1 – Critical	On Premise Service is down, business component is inoperable or critical interface has failed. Customer unable to use, or benefit from the On Premise Service resulting in a critical financial impact on Customer operation. The customer has gone through their internal troubleshooting process to eliminate any and all issues with customer-supplied infrastructure (hardware, network, etc). The condition requires immediate resolution.	Within two hours
Severity 2 – Significant	An issue other than a Severity 1 issue in which the condition makes use or continued use of any one or more functions of the On Premise Service difficult and which Customer, or CyberSponse on Customer's behalf, cannot reasonably circumvent or avoid on a temporary basis without expenditure of significant time or effort.	Within four business hours
Severity 3 – Moderate	An issue other than a Severity 1 or Severity 2 issue which is not critical in that no loss of data occurs and which Customer, or CyberSponse on Customer's behalf, cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.	Within one business day
Severity 4 – Minimal	A non-critical function or component of the On Premise Service is malfunctioning causing minimal impact on Customer's business.	Within two business days

After CyberSponse completes its initial investigation of the issue, CyberSponse will label it with one of the following categories and responses:

- Known Defect
 - Fix or workaround is provided to circumvent or correct the issue.
 - If no workaround is available and it is determined that one is required, CyberSponse will work with Customer to find the best feasible workaround.
 - CyberSponse will advise Customer when the issue is resolved and ticket closed. •

New Defect

- If CyberSponse determines the defect has not been reported before, resolution efforts will be logged into the web-based customer support tool.
- If the defect is deemed to be high impact, a code fix will be created, tested and released in the On Premise Service. CyberSponse will advise Customer on how soon the fix will be implemented.
- If the defect is determined to be of lesser impact not requiring immediate implementation of a fix, then CyberSponse may defer the fix. In that event, Customer will be apprised accordingly.
- Once a plan is created for a future fix, CyberSponse will work as appropriate to resolve the issue.
 - Not Product-Related
- If it is determined that the issue is not related to the On Premise Service, the problem resolution will be Customer's responsibility.
NOTE: Professional Services are available (per an executed Statement of Work) to assist Customer in resolving the issue.
- Ticket will be closed.

Escalation

-
- Escalation may be initiated from either CyberSponse or Customer (via the following escalation path):
 - Online Support
 - E-mail Support
 - Phone escalation

- CyberSponse Escalation Criteria:

- Severity 1 issue – If not resolved within 4 hours and no material progress has been made, the issue is escalated within CyberSponse for additional action and resources as needed. Executive management monitors the issue closely until it is resolved.
- Severity 2 issues – escalated after one business day.
- Severity 3 issues – escalated after three business days.
- Severity 4 issues – escalated after five business days.

Requests for Enhancements

Customers are required to use the web-based support tool to submit recommendations or suggestions for enhancements to the On Premise Service. Using the tool for submitting enhancements assists CyberSponse in evaluating and prioritizing the suggestion.

Releases to the On Premise Service

CyberSponse provides and manages all software releases to maintain the On Premise Service at the latest version. **CyberSponse does not support versions older than 6 months.** Some resolutions may require an upgrade to the most recent release.

Disaster Recovery.

Customer is solely responsible for all Disaster Recovery and Business Continuity plans and operations. CyberSponse cannot make any guarantees for Customer systems.

Data Storage.

Customer is solely responsible for configuring appropriate backups and redundant systems. CyberSponse cannot make any guarantees for Customer data storage.

Cyviz, LLC
2733 Crystal Drive, Suite 800
Arlington, VA 22202

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CYVIZ LICENSE, WARRANTY AND SUPPORT TERMS

I. Return to Factory (RTF) Warranty

All Cyviz solutions come with a two-year return to factory (RTF) hardware and software warranty included in the price of the solution. While under RTF warranty, all defective components will be replaced via advanced parts replacement. If the Ordering Activity operates in a 24/7 environment, 24/7 kits will need to be purchased separately. There are separate 24/7 kits, which cover the color wheels and the fans.

II. Start of the RTF Warranty Period

The hardware and software RTF warranty period starts when the Cyviz Solution Architect (SA) obtains a system sign-off from the Ordering Activity. This normally happens at the completion of the installation of the Cyviz solution. The start of the SLA period will also coincide with the start of the RTF warranty period.

III. Extension of the RTF Warranty Period

After the included two-year RTF Warranty for hardware and software, the Ordering Activity may purchase additional warranties in one-year increments up to a total of three (3) additional years. Therefore, the maximum time for the RTF Warranty period for hardware and software is five (5) years. However, certain conditions must be met. The ability to extend the RTF warranty after the initial purchase is an exclusive benefit from the Contractor, through Cyviz.

IV. Conditions to Extend the RTF Warranty Period

During the initial two-year RTF warranty period, it is strongly encouraged for the Ordering Activity to have an SLA in place for preventative maintenance. Starting with the 3rd year, the customer can extend the warranty through hardware and software of the Cyviz solution for up to three (3) additional years, for a maximum of 5 years of RTF warranty. For each of the three additional years, it is strongly encouraged to also have an active SLA.

V. Factory Location for the Warranty

The return to factory (RTF) location is Cyviz Houston, 5555 San Felipe, Suite 1700, Houston, TX 77056 (unless otherwise noted). The Ordering Activity is responsible for shipping defective equipment to the RTF location, and then Contractor, through Cyviz will pay the shipping back to the Ordering Activity. Cyviz will ship ground, but if an Ordering Activity wishes to expedite shipping, then they will have to incur the additional shipping charges. All RTF shipments must have an RMA number!

VI. Ordering Activity Support During RTF Warranty

An Ordering Activity should e-mail support@cyviz.com as a first step to document any issue(s). A telephone call can also be made to support at (CTC Houston) 713-350-6700 after the initial e-mail.

VII. Covered Items Under the RTF Warranty

During the initial two-year RTF warranty period, if Contractor, through Cyviz, determines a product to be defective in material or workmanship, Cyviz will replace the defective part with a similar or like new part. If the issue is determined to be a manufacturing defect, then Cyviz will replace the product with a similar or like new product.

When a hardware and software warranty is in place, the Ordering Activity will receive advance parts replacement in the form of an equipment swap for such products as the Cyviz scalar, XR301 video processor, XPO cards, Xéd Blending Cards, Cyviz Touch Panel, Cyviz CDC computer, and CDC software BEFORE the defective equipment is shipped back to Cyviz. This will ensure minimal downtime of a Cyviz solution.

The Cyviz projectors and flat panel monitors are not covered under advance parts replacement. They would need to be sent back to the RTF site FIRST where they would need to be repaired or possibly replaced. It is highly recommended to those Ordering Activities who have a mission critical Cyviz solution to purchase one or more Cyviz spares kits. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

VIII. Equipment Swap During RTF Warranty

It is the Ordering Activity's responsibility to swap out the defective components with the replacement components during the hardware and software warranty period. If an SLA is in place, and the Ordering Activity can wait, then Contractor, through a Cyviz Solution Architect (SA) or an authorised Cyviz reseller engineer, will visit at the normal SLA interval to swap out the equipment.

If the Ordering Activity does not have the ability to swap out possible defective equipment and cannot wait for the next SLA visit, then the Ordering Activity may purchase a Cyviz Emergency Site Visit (CESV). The Ordering Activity can also receive training on how to perform the equipment swap.

IX. Cyviz Emergency Site Visit (CESV)

For Ordering Activities who purchase a CESV, the response time is 72 business hours. For example, if the Emergency Call happens on a Monday afternoon, one of the Cyviz SA's would be on-site at the Ordering Activity facility by Friday morning of the same week. If the CESV is not used within a one-year period, it will expire. The CESV cannot be converted to a regular SLA or any portion of an SLA.

X. Innovative Cyviz Technical Certification Training

Ordering Activities who wish to learn how to swap out or replace components may attend the Innovative Cyviz Technical Certification (ICTC) Training Level 1 at a separate cost. In order for a Ordering Activity to become certified at the ICTC Training Level 1, the Ordering Activity must attend a one and one-half day training class at one of the Cyviz Technology Centers (CTC). It is the Ordering Activity's responsibility to pay for travel and expenses for the training. A more advanced, ICTC Training Level 2 is held in Stavanger, Norway each year.

XI. Service Level Arrangement (SLA)

The Cyviz (SLA) includes full preventative maintenance of the complete Cyviz solution, and will cover 'regular use' issues that might arise. A SLA is designed as one (1), two (2) or four (4) visits per year. An SLA4 coincides with a 24/7 environment. Contractor, through Cyviz, will initiate contact with the Ordering Activity and find a mutually agreeable time to schedule the next SLA visit. However, the Ordering Activity must take ultimate responsibility for scheduling the SLA visit.

If an Ordering Activity has more than eight (8) total channels of a Cyviz solution at each distinct location (i.e. a location separated by a reasonable distance), then a Cyviz SLA – Extra Channel charge may apply beyond 8 channels. The parties will discuss and determine if there will be an extra channel charge.

The SLA is not a replacement for the RTF (return to factory) warranty on Cyviz projectors, flat panels or on other Cyviz components.

XII. Work Performed During an SLA Visit

Contractor, through a Cyviz solution architect, a Cyviz certified partner, or a Ordering Activity who has been certified at the Intermediate Cyviz Technical Certification (ICTC) Level 2, may perform the tasks associated with the SLA.

On the SLA visit, the following will happen, (1) Check lamp performance and replace lamps if necessary¹, (2) replace any malfunctioning component², (3) Fine adjustment of projector alignment, projector or flat panel monitor calibration of colors and brightness, (4) Upgrade of projector or flat panel monitor firmware if needed, (5) Source set up of additional Cyviz components if needed³, (6) Upgrade of Cyviz Display Control Software⁴, (7) Adjustment of the Cyviz flexible screen, and (8) Possible re-configuration of the complete system to its original state if the system has been changed/altered.

Note¹ – Extra lamps or projector bulbs must be purchased separately and will need to be delivered to the Ordering Activity PRIOR to the SLA visit.

Note² – It is the Ordering Activity's responsibility to inform Cyviz of any malfunctioning equipment. If the Ordering Activity would like an equipment swap to be performed at the next Cyviz SLA visit, then Cyviz will either send the equipment prior to the SLA visit or have the Cyviz SA bring the equipment to the next SLA visit.

Note³ – If the Ordering Activity would like to add additional secondary sources such as monitors, TV tuners, DVD or Blu-ray player, etc., (i.e. non-Cyviz components), then this service will need to be communicated to the Contractor. Additional Cyviz Installation charges may apply.

Note⁴ – During the time of an SLA visit, the Ordering Activity's CDC software may be upgraded to the latest version. Unless the Ordering Activity has purchased a Cyviz Multi-touch monitor, it is possible certain versions of the CDC software will not compatible with a non-Cyviz personal computer system for controlling the Cyviz solution.

XIII. Failure to Purchase an SLA

If the Ordering Activity decides not to purchase an SLA at the time of the equipment purchase, then two things will happen: (a) the maximum RTF warranty period for hardware and software maintenance will be two (2) years, and (b) it will be the Ordering Activity's responsibility to perform preventative maintenance.

XIV. Equipment Outside of the RTF Warranty Period

An Ordering Activity's RTF may expire at the end of two-years, three-years, four-years or at the end of five-years. At the time of the expired Cyviz RTF warranty, it is the Ordering Activity's responsibility to send defective equipment back to Contractor, through Cyviz, at the Ordering Activity's cost for possible repair or replacement. Cyviz will determine if said equipment is repairable, and if so, how much to invoice the Ordering Activity before equipment is sent back. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

XV. Cyviz Spares Kits

For Ordering Activities who have multiple projectors or multiple flat panels, it is recommended to purchase one or more Cyviz Spares Kits. A Cyviz Spares Kit for Viz3D includes; 1 EVO-2 projector, an extra set of glass filters, 10 pair of stereo glasses, and 2 replacement bulbs. The Cyviz Spares Kit for Bizwall, Vizwall or Clusterwall includes; 1 F32 series projector, 4 replacement bulbs, an XPO.3 or XPO.4 card (if applicable), a Cyviz Scalar, and an edge blending card (if applicable). A Cyviz Spares Kit for Flat Panel Monitor includes 1 46" or 55" LCD/LED with redundant power supply, an XPO.3 or XPO.4 card (if applicable), 5 dynamic CDC clients, and a Cyviz Scalar.

XVI. Other Warranty and SLA Items

(a) The RTF warranty and SLA is non-transferrable, (b) The Ordering Activity should have all serial numbers of projectors, flat panel monitors, electronic components and software handy for smoother support. (c) the Contractor reserves the right to refuse RTF warranty coverage to a Ordering Activity who is not current on his or her warranty payments. (d) the Contractor does not make any claims express or otherwise listed outside of this RTF Warranty and SLA document.

Docker, Inc.
144 Townsend Street
San Francisco, CA 94107

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

DOCKER, INC.

DOCKER, INC. LICENSE, WARRANTY AND SUPPORT TERMS

This U.S. Government Supplement ("**Supplement**") and the Docker Software End User Subscription Agreement (<https://www.docker.com/docker-software-end-user-subscription-agreement>) ("**Enterprise Agreement**"), establish the terms and conditions enabling Docker, Inc. ("**Docker**") to provide Docker's products and services to U.S. Government agencies, including any "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2H ADM (the "**Customer**"). Unless otherwise indicated herein, any capitalized terms which are defined in the Enterprise Agreement shall have the same meaning where used in this Supplement.

The Enterprise Agreement and this Supplement cover the use of Supported Software or Subscription Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Docker by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Docker agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follow:

1.0 Enterprise Agreement – Preamble

The following is modified from Enterprise Agreement Preamble "BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("**DOCKER**") AND THE INDIVIDUAL OR LEGAL ENTITY" and is replaced with the following: "BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("**DOCKER**") AND THE LEGAL ENTITY".

The following is deleted from Enterprise Agreement Preamble "OR IS USING THE APPLICABLE SOFTWARE MADE AVAILABLE BY DOCKER".

2.0 Enterprise Agreement Section 1.0 Definition:

The following is modified from **Enterprise Agreement Section 1.11** "Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: <https://www.docker.com/legal/subscription-services/>" and is replaced with **Enterprise Agreement Section 1.11** "Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: <https://www.docker.com/support/>".

3.0 Enterprise Agreement Section 2.0, License:

The following is deleted from **Section 2.3, License Keys**: "Customer acknowledges and agrees that any attempt to exceed the use of the Licensed Software beyond the limits configured into the Key will automatically and immediately terminate the licenses granted under this Agreement".

4.0 Enterprise Agreement Section 6.0 Records and Audit:

The following is modified from **Enterprise Agreement Section 6.0 Records and Audit** "Upon prior notice, Docker or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement" and is replaced with **Enterprise Agreement Section 6.0 Records and Audit** "Upon prior notice and in accordance with Customer's security requirements, Docker or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement".

The following is deleted from **Enterprise Agreement Section 6.0 Records and Audit** "Prompt adjustments shall be made by Customer as directed by Docker to compensate for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee, with the applicable late payment interest. Additionally, if Customer has underpaid Docker or its authorized reseller by more than 5% of the total amount owed hereunder, the cost of the audit shall be borne by Customer." and is replaced with **Enterprise Agreement Section 6.0 Records and Audit** "During the term of this Agreement and for one (1) year thereafter: (a) If Customer's security requirements are met, Docker or its designated agent may inspect Customer's facilities and records to verify Customer's compliance with this Agreement. Any such inspection will take place only during Customer's normal business hours and upon no less than ten (10) days prior written notice from Docker. Docker will give Customer written notice of any non-compliance, including without limitation the number of underreported units of Supported Software or Subscription Services ("Notice"); or (b) If Customer security requirements are not met and upon Docker's request, Customer will run a self assessment with tools provided by and at the direction of Docker ("Self Assessment") to verify Customer's compliance with this Agreement. Within thirty (30) days from Docker's request, Customer will finalize the Self Assessment and provide Docker with the results in the form of a written report certified by Customer's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Customer will make payment to Docker or its authorized channel partner for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

5.0 Enterprise Agreement Section 7.0 Term:

The following is deleted from **Enterprise Agreement Section 7.0 Term** "Either party may terminate this Agreement and any Order Form incorporating the terms of this Agreement (if Docker is a party to such Order Form) if the other party materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice thereof." and is replaced with **Enterprise Agreement Section 7.0 Term** "Recourse against the Customer for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. Docker shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer".

6.0 Enterprise Agreement Section 9.0 Confidentiality:

The following is deleted from **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Injunctive Relief** is deleted in its entirety.

The following section heading is deleted from **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.6 Return of Confidential Information** is replaced with **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Return of Confidential Information**.

7.0 Enterprise Agreement Section 10. Warranties:

The following section heading is modified from **Enterprise Agreement Section 10.0 No Warranties** is replaced with **Enterprise Agreement Section 10. Limited Warranties**.

The following is deleted from **Enterprise Agreement Section 10.0 Limited Warranties** "CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT ALL USE OF THE SUPPORTED SOFTWARE IS AT CUSTOMER'S SOLE RISK AND THAT THE SUPPORTED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." " is replaced with **Enterprise Agreement Section 10. Limited Warranties** "DOCKERS WARRANTS THAT (a) THE SUPPORTED SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF CUSTOMER'S RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH DOCKER'S WRITTEN MATERIALS ACCOMPANYING IT, AND (b) ANY SUPPORT SERVICES PROVIDED BY DOCKER SHALL BE SUBSTANTIALLY AS DESCRIBED IN APPLICABLE WRITTEN MATERIALS PROVIDED TO CUSTOMER BY DOCKER. EXCLUDING THE FOREGOING..."

8.0 Enterprise Agreement Section 11. Indemnification:

The following section is modified from **Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker** "(b) tenders to Docker sole control of the defense and settlement of the claim, and" is replaced with **Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker** "(b) tenders to Docker control of the defense and settlement of the claim to the extent permitted by 28 USC 516, and".

The following is deleted from **Enterprise Agreement Section 11. sub-section 11.3 By Customer** is deleted in its entirety.

9.0 Enterprise Agreement Section 12. Limitation of Liability:

The following section is deleted from **Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap**. "THE GREATER OF USD \$100 OR".

The following section is amended from **Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap**. "The foregoing exclusion/limitation shall not apply to (1) personal injury or death resulting from Docker's negligence; (2) for fraud committed by Docker; or (3) for any other matter for which liability cannot be excluded by law."

10.0 Enterprise Agreement Section 13. Export Restrictions:

The following section is deleted from **Enterprise Agreement Section 13. Export Restrictions**. "Customer will defend, indemnify, and hold harmless Docker and its suppliers and licensors from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees."

11.0 Enterprise Agreement Section 14. Miscellaneous:

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Agreement will be governed by the laws of the State of California without reference to conflict of law principles." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "Agreement will be governed by the Federal laws of the United States without reference to conflict of law principles."

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Docker may assign the entirety of its rights and obligations under this Agreement, without consent of the Customer, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets."

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof, namely the licensing of the Supported Software."

The following section is modified from **Enterprise Agreement Section 14. Miscellaneous** after "...signed by both parties and clearly understood by both parties to be an amendment or waiver." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "...signed by both parties and clearly understood by both parties to be an amendment or waiver. The terms of this Agreement shall not supersede the terms of the underlying GSA Schedule Contract".

Eccentex
6101 West Centinela Ave
Suite 110
Culver City, CA 90230

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

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

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ECCENTEX LICENSE, WARRANTY AND SUPPORT TERMS

This Agreement describes the terms and conditions that will apply to (i) subscription of Eccentex's proprietary platform, applications templates, or software products that Ordering Activity purchases from time to time as set forth in an applicable order (the "**Subscription Schedule**"), (ii) maintenance and support services relating to such products as described in Schedule B (referred to herein collectively as the "**Services**").

1. Privacy & Security. For informational purposes only, Eccentex's privacy and security policies may be viewed at <http://www.eccentex.com>. Eccentex reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Eccentex occasionally may need to notify all users of Eccentex's products and services of important announcements regarding the operation of the products and services.

2. License Grant & Restrictions

a. Eccentex hereby grants Ordering Activity a non-exclusive, non-transferable (except as permitted under Section 23), worldwide right for the number of Users paid for by Ordering Activity to use Eccentex's proprietary platform, applications templates, or software identified on the applicable Subscription Schedule (the "**Licensed IP**"), solely for Ordering Activity's own internal business purposes set forth on the applicable Subscription Schedule, and subject to the terms and conditions of this Agreement, including those provided in the applicable Subscription Schedule. As used herein, "**User**" means a designated employee or contractor of Ordering Activity who is authorized by Ordering Activity to use the Licensed IP. Access to the Licensed IP will be via a website operated and hosted by Eccentex and provided under a "Platform as a Service" or "Software as a Service" model ("**Software Service**").

b. The license granted herein does not include the right to sublicense without the prior written consent of Eccentex, except Ordering Activity may sublicense to an affiliate of Ordering Activity and to one or more independent contractors retained by Ordering Activity, but solely for the benefit of Ordering Activity.

c. The license granted above is based on a per User, per case, and per environment subscription basis. Therefore, if Ordering Activity desires for additional employees or contractors beyond the number of authorized Users, cases, and/or environments stated in the Subscription Schedule, Ordering Activity must purchase additional subscriptions for such individuals, cases and environments.

d. Ordering Activity acknowledges that the Licensed IP contains valuable trade secrets of Eccentex and its suppliers. Accordingly, except as expressly permitted under this Agreement, Ordering Activity shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, timeshare, outsource, lease, rent, or otherwise commercially exploit or make available to any third party the Licensed IP or any data, information, graphics, materials, or other content provided to Ordering Activity through the use of the Licensed IP (the "**Content**") in any way; (ii) modify or make derivative works based upon the Licensed IP or the Content or merge the Licensed IP or the Content with other software or data; (iii) create Internet "links" to the Licensed IP or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer, decompile, or access the Licensed IP in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Licensed IP, or (c) copy any ideas, features, functions or graphics of the Licensed IP.

e. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Licensed IP. Ordering Activity will ensure that each username and password issued to a User will be used only by that individual. Ordering Activity is responsible for maintaining the confidentiality of all Users' usernames and passwords and is solely responsible for all activities that occur under these usernames.

f. Ordering Activity may use the Licensed IP only for Ordering Activity's internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) use, send, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violate third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Licensed IP or the data contained therein; (v) attempt to gain unauthorized access to the Licensed IP or its related systems or networks; or (vi) otherwise use the Licensed IP to carry out any infringing or unlawful activities.

3. Maintenance and Support. Eccentex will provide the maintenance and support services for the Licensed IP to Ordering Activity as set forth in Schedule B.

4. Ordering Activity Responsibilities

a. Ordering Activity is responsible for all activities occurring under Ordering Activity's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Ordering Activity's use of the Licensed IP, including those related to data privacy, international communications and the transmission of technical or personal data. Ordering Activity shall: (i) notify Eccentex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Eccentex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Ordering Activity or Ordering Activity's Users; and (iii) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.

b. To the extent Ordering Activity is licensed to use Eccentex's proprietary platform and/or applications templates to develop or configure a customized application ("**Ordering Activity Application**"), Ordering Activity acknowledges that it shall be responsible for the accuracy, quality, integrity and legality of the Ordering Activity Application, content and data and for the quality and configuration of the Ordering Activity Application and the performance of the Ordering Activity Application.

5. Account Information and Data

a. Eccentex does not own any data, information or material that Ordering Activity submits to Eccentex in the course of using the Software Service (“**Ordering Activity Data**”). Eccentex will not modify the Ordering Activity Data or disclose the Ordering Activity Data; provided however, Eccentex may retain, use, and disclose to any third parties Ordering Activity Data if Ordering Activity Data is aggregated with similar data collected from other Ordering Activitys and does not disclose Ordering Activity as the source of the Ordering Activity Data.

b. Ordering Activity, not Eccentex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Ordering Activity Data, and Eccentex shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Data.

c. During the term of this Agreement and upon termination, Eccentex will make available to Ordering Activity a file of the Ordering Activity Data within 30 days of Ordering Activity's written request. Ordering Activity agrees and acknowledges that Eccentex has no obligation to retain the Ordering Activity Data, and may delete such Ordering Activity Data, if this Agreement is terminated, unless Ordering Activity requests to receive a copy of the Ordering Activity Data at the time of termination and pays for all outstanding fees owed to Eccentex.

d. Upon request and issuance of an order, Eccentex will work with Ordering Activity to design custom reports designed to give access to all Ordering Activity Data. The design and estimated cost of the custom reports will be covered in a time and materials professional services statement of work.

6. Intellectual Property Ownership. Eccentex alone (and its licensors, where applicable) shall own all right, title and interest, including all related patent rights, copyright rights, trademark rights, trade secret rights, moral rights, and any other intellectual property or proprietary rights of any kind or nature (collectively, “**Intellectual Property Rights**”), in and to all Licensed IP and any other software, applications templates, websites, systems, and related technology used to provide the Software Services (the “**Eccentex Technology**”), the Content, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Ordering Activity or any other party to Eccentex relating to the Licensed IP or the Software Services (collectively, “**Suggestions**”), and Ordering Activity hereby assigns all right, title, and interest in and to all Suggestions, and all Intellectual Property Rights therein, to Eccentex. This Agreement is not a sale and does not convey to Ordering Activity any rights of ownership in or related to the Eccentex Technology or the Intellectual Property Rights therein owned by Eccentex. There are no implied licenses granted under this Agreement. The Eccentex name, the Eccentex logo, and the product names associated with the Licensed IP and Software Services are trademarks of Eccentex or third parties, and no right or license is granted to use them. For the avoidance of doubt, and subject to the ownership rights of Eccentex in its Licensed IP, including proprietary platform applications templates, software, and any other Eccentex Technology, any Ordering Activity Application shall be owned by Ordering Activity.

7. Reserved.

8. Reserved.

9. Excess Data Storage Fees. The maximum disk storage space provided to Ordering Activity at no additional charge is 1 (One) GB per User and disk storage space between Users may be shared to the extent that total storage space required for Ordering Activity does not exceed maximum space for all Users combined. Eccentex will use reasonable efforts to notify Ordering Activity when the average storage used per license reaches approximately 90% of the maximum.

10. Reserved.

11. Reserved.

12. Reserved.

13. Reserved.

14. Representations & Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Eccentex represents and warrants that: (a) it has the right to grant to Customer the rights to the Licensed IP granted herein; (b) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (c) the Software Services will perform substantially in accordance with the online Eccentex help documentation under normal use and circumstances. As Customer's exclusive remedy, and Eccentex's sole and exclusive liability for any breach of the foregoing representations and warranties by Eccentex, Eccentex will promptly repair or replace the non-conforming Licensed IP or Services at no additional charge.

15. Reserved.

16. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE LICENSED IP, THE SERVICES INCLUDING THE SOFTWARE SERVICES, OR ANY CONTENT PROVIDED HEREUNDER. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE LICENSED IP OR THE SERVICES INCLUDING THE SOFTWARE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE LICENSED IP OR THE SERVICES, INCLUDING THE SOFTWARE SERVICES WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE LICENSED IP, THE SOFTWARE SERVICES OR THE SERVER(S) THAT MAKE THE SOFTWARE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN SECTION 14, THE LICENSED IP, THE SERVICES (INCLUDING THE SOFTWARE SERVICES) AND ALL CONTENT ARE PROVIDED TO ORDERING ACTIVITY STRICTLY ON AN “AS IS” BASIS. EXCEPT AS PROVIDED IN SECTION 14, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED,

STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND IMPLIED INDEMNIFICATION ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ECCENTEX AND ITS LICENSORS.

17. Internet Delays. THE SOFTWARE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ECCENTEX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

18. Reserved.

19. Reserved.

20. Reserved.

21. Reserved.

22. Government Use. The Licensed IP is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such Licensed IP is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the Licensed IP with only those rights set forth herein.

Reserved.

Schedule A
Eccentex Subscription Schedule
Contract # _____

Ordering Activity desires to receive a subscription to certain proprietary platform known as AppBase or application developed by or for Eccentex using such platform. All capitalized terms used herein that are not defined herein have the meanings given to them in the Agreement.

- a. Software Service – access to the Licensed IP hosted by or for Eccentex will be made available to Ordering Activity via a restricted website.
2. **Usage Rights:** Ordering Activity may use the Licensed IP only on the following terms:
- a. License to Platform and/or Applications Templates:
PaaS Service. If Ordering Activity desires to access the Platform and/or Applications Templates through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term (defined below), a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to (i) access and use the Platform and/or Applications Templates solely for purposes of configuring and customizing a Ordering Activity Application (described below) based on the Platform and/or Applications Templates according to the user guide provided by Eccentex, and (ii) access and use the Ordering Activity Application for internal business purposes only. Ordering Activity authorizes Eccentex (directly or through a contractor) to host, copy, transmit, display and otherwise use the Ordering Activity Application solely as necessary for Eccentex to provide the Software Services in accordance with the Agreement.
- Ordering Activity Application:
License to Application: If Ordering Activity desires to access an Application through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to access the Application and use the Application for internal business purposes only.
3. **Service Level Agreement.** Eccentex will host the Licensed IP and use commercially reasonable efforts to provide the Software Services in accordance with the Service Level Agreement provided on Attachment 1.

Schedule 1
Service Level Agreement

1. **Definitions.** As used in this Service Level Agreement, the following capitalized terms shall have the meanings ascribed thereto:
 - i. **“Eligible Credit Period”** is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event for a particular Subscription included in the SLA claim occurred.
 - ii. **“Monthly Uptime Percentage”** is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the **“Scheduled Availability Number”**) and dividing that number by the Scheduled Availability Number. If Ordering Activity has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.
 - iii. **“SLA”** means a Monthly Uptime Percentage of at least 99% during each Subscription Month.
 - iv. **“Subscription”** means the provision of the Instance to Ordering Activity on the terms described in the applicable order.
 - v. **“Subscription Month”** means each applicable calendar month in which the Subscription is contracted to be provided.
 - vi. **“Subscription Suspension”** means the unavailability of a Subscription: (a) during weekends or on weekdays between 11:00 p.m. and 5:00 a.m. EST with at least 3 days’ notice (provided via email or on Eccentex’ web site) for scheduled downtime to permit Eccentex to conduct maintenance or make modifications to the Subscription; (c) at any time in the event of a denial of service attack or other event that Eccentex reasonably determines may create a risk to the applicable Subscription; or (d) at any time in the event that Eccentex reasonably determines that suspension is necessary for legal or regulatory reasons.
 - vii. **“Unavailable”** or **“Unavailability”** means that all of the running Instances are unresponsive during a five minute period and Ordering Activity is unable to launch replacement Instances.
2. **Software Service Levels.** Eccentex will use commercially reasonable efforts to make each Subscription available within the SLA. If the Monthly Uptime Percentage is less than 90% in more than three (3) months during any twelve (12) months period, Ordering Activity may terminate this Agreement for material breach.
3. **Suspension of Subscription**
 - a. Ordering Activity acknowledges that Ordering Activity’s access to and use of a Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Eccentex’s reasonable control.
 - b. Eccentex will have no liability for any damage, liabilities, or other losses that Ordering Activity may incur as a result of any Subscription Suspension. Eccentex will use reasonable efforts to provide Ordering Activity email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.
4. **Security**
 - a. Eccentex agrees that it will use commercially reasonable efforts adhere to the security protocols described on Attachment 2.
 - b. Other than the Eccentex security protocols described on Attachment 2, Ordering Activity acknowledges that it is responsible for security,

protection and backup of its content, data and Ordering Activity Applications. Eccentex strongly encourages Ordering Activity, where available and appropriate, to (a) use encryption technology to protect Ordering Activity's content and data from unauthorized access, and (b) routinely archive Ordering Activity's content and data. Ordering Activity is fully responsible for all Ordering Activity Applications running on, and traffic originating from, each Instance. Ordering Activity should protect its authentication keys and security credentials. Actions taken using Ordering Activity's credentials will be deemed to be actions taken by Ordering Activity and will be the responsibility of Ordering Activity.

Attachment 2

Security Protocols

- a. **Access Control:** Implement access control measures restricting access to applications, data, and software to only those entities that have a documented, current business need. These measures shall meet the requirements of the security policies required by the Ordering Activity (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.
- b. **Audit Controls:** Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.
- c. **Authorization Control:** Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Ordering Activity's existing identity management solution where one exists to enable single sign-on and centralized identity management. Assure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.
- d. **Data Authentication:** Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner.
- e. **Entity Authentication:** Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:
 - a. Periodic reset/renewal every six months or less (Password ageing)
 - b. Complexity and length requirements in the case of passwords
 - i. No dictionary words
 - ii. No dates
 - iii. Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)
 - c. Lockouts after five unsuccessful authentication attempts
- f. **Encryption at Rest:** Sensitive data shall be encrypted whenever stored in the database or in persisted memory using the highest possible encryption in compliance by the specific country.
- g. **Encryption in Flight:** Communications over a network containing sensitive data shall be encrypted through SSL
- h. **Business Continuity:** Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for three weeks trailing, and full data backups taken weekly and stored for three years trailing.
- i. **Audits and Policy Compliance:** Documentation and implementation of security policy shall be prepared and supplied to the Ordering Activity on demand for ALL of the following policy components:
 - a. A data backup plan
 - b. A disaster recovery plan
 - c. An emergency mode operation plan
 - d. Testing and revision procedures
 - e. Access authorization policies and procedures
 - f. Security testing
 - g. Virus checking
 - h. Security incident response procedures
 - i. Personnel clearance procedures
- j. **Assigned Security Responsibility:** Assign and document the assignment of security responsibility to a specific individual or role within the Software Service provider organization. This responsibility would include the management and supervision of the use of security measures and the conduct of personnel.
- k. **Physical Security:** Implement and document physical access controls (limited access) governing the Software Service provider's location(s) that are used to access Ordering Activity's applications, data, and software.

Schedule B

Maintenance and Support Terms

1. **General.** Eccentex includes support and maintenance services with the Software Services. Support and maintenance services are as described below.
2. **Maintenance and Support Services.** Maintenance and Support Services include:
 - (i) **Maintenance Releases and Upgrades:** During the term, Eccentex agrees to deliver to Ordering Activity without charge any upgrades containing error corrections or enhancements to the Licensed IP ("**Upgrades**").
 - (ii) **Standard Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity live telephone and email support during normal business hours of Eccentex (Monday – Friday, 8:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Eccentex holidays), or at such other hours as the parties may mutually agree to, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, and (d) provision of work-arounds where feasible.
 - (iii) **Critical Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected.
 - (iv) **Support Liaisons:** Eccentex will coordinate with up to four Ordering Activity employees designated as support liaisons to manage support calls to Eccentex.

3. Technical Support. Eccentex offers the Ordering Activity a single point of contact for all product support questions. Ordering Activity will call the technical support number and the call coordinator will work to address Ordering Activity issues, with response and escalation based on the severity of the problem.

Eccentex shall use commercially reasonable efforts to respond to problems in accordance with the "Priority Codes" set forth below. The Priority Codes below depict the priority level to be assigned by Eccentex to each issue or problem phoned in by Ordering Activity.

"A Priority" - Licensed IP is completely inoperable. Resources assigned within two (2) hours after notice.

"B Priority" - Licensed IP error is detected for a system module, which seriously impairs system operations, but does not render it inoperable. Resources assigned within four (4) hours after notice during standard support hours.

"C Priority" - Ordering Activity has a problem with Licensed IP but there is a known workaround which does not seriously impair the operation of Licensed IP. Resources assigned within eight (8) hours after notice during standard support hours.

"D Priority" - Minor problems which Eccentex plans, or will plan to incorporate into a future release of the Licensed IP, to be resolved in connection with the general commercial availability of such future release.

4. Data Backup. Eccentex provides ongoing data backup of configuration data as well as overall user generated data. Eccentex will keep a rolling backup of a full data snapshot per day for a timeframe minimum of 2 days.

5. Conditions. Maintenance and support apply to the standard Licensed IP made generally available by Eccentex to Ordering Activity, and not to modifications delivered as part of any professional services. Eccentex reserves the right to address defects in the next release of the Licensed. Eccentex will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Eccentex did not provide or (ii) Eccentex has not contracted with Ordering Activity to support under this Agreement. Maintenance services are not on-site services.

Elasticsearch Federal, Inc.
800 West El Camino Real, Suite 350
Mountain View, CA 94040

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

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

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

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A – ELASTICSEARCH

SHIELD SOFTWARE LICENSE AGREEMENT

This **SHIELD SOFTWARE LICENSE AGREEMENT** (this “Agreement”) is entered into by and between Elasticsearch Federal, Inc. (“Elasticsearch”) and the Federal Ordering Activity (“You”) that has downloaded Elasticsearch’s Shield software to which a Federal Ordering Activity has issued an applicable ordering document to acquire the Shield Software subject to this Agreement. This Agreement is effective as of the earlier of the date You downloaded the Shield Software or the date an applicable ordering document (“Order Form”) is entered into by Elasticsearch and You (the “Effective Date”).

1. SOFTWARE LICENSE AND RESTRICTIONS

Section - 1.1 LICENSE GRANTS.

- (a) **30 Day Free Trial License.** Subject to the terms and conditions of this Agreement, Elasticsearch agrees to grant, and does hereby grant to You for a period of thirty (30) days from the Effective Date (the “Trial Term”), solely for Your internal business operations, a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Shield Software (“Documentation”), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software. For the avoidance of doubt, You understand and agree that upon the expiration of the Trial Term, Your license to use the Shield Software will terminate, unless you purchase Elasticsearch support services that entitle you to use the Shield Software.
- (b) **Fee-Bearing Production License.** Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees, Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software in connection with the number of nodes for which You have purchased support services from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the Documentation, if any, provided with the Shield Software, provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software.
- 1.2 **Reservation of Rights; Restrictions.** The Shield Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation (“FAR”), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Shield Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Shield Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Shield Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Shield Software in whole or in part to any third party; (iii) use the Shield Software for providing time-sharing services, any software-as-a-service offering (“SaaS”), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Shield Software; or (v) make available to any third party any analysis of the results of operation of the Shield Software, including benchmarking results, without the prior written consent of Elasticsearch.
- 1.3 **Open Source.** The Shield Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, “Open Source”), which Open Source may have applicable license terms as identified on a website designated by Elasticsearch or otherwise provided with the applicable Software or Documentation. A hard copy of the Open Source licenses is provided to U.S. Federal Government Licensees and End-Users. Reserved.

2. RESERVED.

3. DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SHIELD SOFTWARE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SHIELD SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SHIELD SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER,

ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE SHIELD SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SHIELD SOFTWARE WILL BE UNINTERRUPTED.

4. RESERVED.

5. GOVERNMENT RIGHTS.

- 5.1 The Shield Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Shield Software, associated commercial computer software documentation and commercial technical data, in any contract or Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

6. EXPORT CONTROL.

- 6.1 You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Shield Software may in certain circumstances be considered a re-export of Shield Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

7. RESERVED.

8. RESERVED.

MARVEL SOFTWARE LICENSE AGREEMENT

This **MARVEL SOFTWARE LICENSE AGREEMENT** (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch's Marvel software to which this Agreement is attached ("Marvel Software"), or in the case of a Federal Ordering Activity, has issued a Purchase Order or similar contractual document to acquire the Marvel Software subject to this Agreement. This Agreement is effective as of the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You, or, if no Order Form applies, the date you download the Marvel Software (the "Effective Date").

1. SOFTWARE LICENSE AND RESTRICTIONS

1.1 License Grants. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees (provided that no fee shall be required for use of the Marvel Software for other than production purposes), Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Marvel Software in connection with the number of nodes for which You have purchased a license or support services, as applicable, from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Marvel Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Marvel Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Marvel Software.

1.2 Reservation of Rights; Restrictions. Marvel Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Marvel Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Marvel Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Marvel Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Marvel Software in whole or in part to any third party; (iii) use the Marvel Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Marvel Software; or (v) make available to any third party any analysis of the results of operation of the Marvel Software, including benchmarking results, without the prior written consent of Elasticsearch. The Marvel Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms. The full license terms and conditions of Open Source Software contained in or provided with the Marvel Software are set forth on a website designated by Elasticsearch or otherwise provided with the Marvel Software or Documentation. A hard copy of the Open Source Software licenses is provided to U.S. Federal Government Licensees and End-Users.

1.3 Cluster Metadata. You understand and agree that once deployed, and on a daily basis, the Marvel Software provides metadata to Elasticsearch about Your cluster statistics and associates that metadata with Your IP address. However, no other information is provided to Elasticsearch by the Marvel Software, including any information about the data You process or store in connection with your use of the Marvel Software. At no time does this feature provide access to the data You process or store, or to your network. Instructions for disabling this feature are contained in the Marvel Software, however leaving this feature active enables Elasticsearch to gather cluster statistics and provide an improved level of support to You.

2. **RESERVED.**

3. **DISCLAIMER OF WARRANTIES**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE MARVEL SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE MARVEL SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE MARVEL SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF

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THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE MARVEL SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE MARVEL SOFTWARE WILL BE UNINTERRUPTED.

4. **RESERVED.**

5. **GOVERNMENT RIGHTS.**

The Marvel Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Elasticsearch Software License Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Marvel Software, associated commercial computer software documentation and commercial technical data, subject to this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

6. **EXPORT CONTROL.**

You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Marvel Software may in certain circumstances be considered a re-export of Marvel Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

7. **RESERVED.**

8. **RESERVED.**

Elemental Technologies
225 SW Broadway Suite 600
Portland, OR 97205

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ELEMENTAL TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS

End User License Agreement

1. DEFINITIONS:

1.1 "Product" means the Elemental software program, in object code only, provided to Ordering Activity under this Agreement; all related images, animations, video, audio, and other content incorporated in such software program; all accompanying manuals and other documentation (the "Documentation"); and all enhancements, upgrades, and extensions thereto that may be provided by Elemental to Ordering Activity from time to time.

1.2 "Licensed Configuration" means, to the extent applicable, the choice of features or any other hardware or software specifications, as selected or ordered by Ordering Activity in an Order Form, and upon which the licensing fee was based.

1.3 "License Key" means either (a) the software key code or (b) the physical USB key provided to you by Elemental (or its reseller) (a "USB License Key"), which enables the Product to operate on the Licensed Hardware for the specified Licensed Configuration, if applicable to the Product(s).

1.4 "Licensed Hardware" means the single unit of hardware (workstation, encoder, or otherwise) designated by Ordering Activity for use of the Product.

1.5 "Order Form" means a purchase order or other written or electronic document in which you specify the Licensed Hardware, specific modules and/or choice of features, and any other applicable hardware or software requirements and restrictions.

2. LICENSE AND RESTRICTIONS:

2.1 License. Subject to the terms and conditions of this Agreement, Elemental grants Ordering Activity a non-exclusive, non-transferable, limited license to use the Product, solely in machine-readable form, only on the Licensed Hardware, only for the Licensed Configuration, and only if all related license fees have been paid. Your use is further subject to any limitations set forth in the Order Form. You may use the Product for your own internal benefit and for providing goods or services to your customers; provided that such customers have no access to the Product.

2.2 General Restrictions. You may not copy the Product, in whole or in part, except that you may make and retain a reasonable number of copies solely for back-up purposes in order to re-install the Product. You also shall not use or allow the use of the Product for any of the following purposes:

- a) by persons not employed by or under an independent contractor relationship with you that will bind such persons to the terms of this Agreement; or
- b) as essential equipment in the operation of any nuclear facility, aircraft navigation, medical or communications systems or air traffic control machines, or any other use in which the failure of the Product could lead to death, personal injury or severe physical or environmental damage.

2.3 Intellectual Property. Ordering Activity acknowledge that the Product, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts are valuable intellectual property owned by Elemental and its licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms or file formats of the Product by any means. You will not develop methods to enable unauthorized parties to use the Product or any copy thereof, or to develop any other product containing any of the concepts and ideas contained in the Product. You will not modify the Product or incorporate any portion of the Product into any other software or create a derivative work of any portion of the Product. You will not remove any copyright or other proprietary notices from the Product or any copies thereof. Elemental reserves all rights not expressly granted hereunder. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

2.4 Upgrades. This Agreement entitles you to receive any future maintenance releases, which includes any bug fixes but does not include any updates or upgrades, releases offered as a separate product or releases subject to a separate license agreement. Your rights to the previously-installed release terminate once you install the new release, except that you may remove the new release and reinstate your rights to the previously-installed release at any time during the term of this Agreement for the remaining term. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) YOU HAVE NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS YOU, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLD A VALID LICENSE TO THE ORIGINAL PRODUCT AND HAVE PAID THE APPLICABLE FEE FOR THE UPGRADE, IF ANY; (2) IF INSTALLED IN ELEMENTAL EQUIPMENT, USE OF UPGRADES IS LIMITED TO ELEMENTAL EQUIPMENT FOR WHICH YOU ARE THE ORIGINAL END USER PURCHASER OR LESSEE OR YOU OTHERWISE HOLD A VALID LICENSE TO USE THE PRODUCT WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

3. MAINTENANCE AND SUPPORT. Elemental shall have no obligation to provide maintenance and support for the Product under this Agreement. Any such maintenance and support shall be provided in accordance with a separate maintenance agreement between the parties.

6. NOTICE TO U.S. GOVERNMENT END USERS: The Product is a "Commercial Item," as that term is defined at 48 C.F.R. §2.101., consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 252.227-7014, as applicable, the Commercial Computer

Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to this Agreement. Should the foregoing clauses be amended after December, 2007, then their comparable replacements or revisions shall be incorporated herein and automatically apply.

7. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY:

7.1 Limited Warranty. Elemental warrants that the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its Documentation, as it exists at the date of delivery, for a period of sixty (60) days from the date you receive the original License Key. Elemental's entire liability and your exclusive remedy shall be, at Elemental's option, either: (i) return of the license fee paid to Elemental for the Product, resulting in the termination of this Agreement, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. This offer is void if the media defect results from negligence, accident, abuse, or misapplication.

7.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.1, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

8. GOVERNMENT REGULATION: Ordering Activity agree that the Product and any related technical data will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export law. Ordering Activity will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of the Product and related technical data.

9. HIGH RISK APPLICATIONS: THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). Elemental and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.

EMC Corporation
8444 Westpark Drive
McLean, VA 22102

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

EMC CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

[CLICK HERE](#) for additional EMC Corporation terms/descriptions:
(Software Use Rights, Basic/Enhanced/Premium Support Terms, Warranty/Limited Warranty/Maintenance Terms)

1. DEFINITIONS.

- A. "Documentation"** means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.
- B. "Products"** mean **"Equipment"** (which is the hardware delivered by LICENSOR to Customer) and/or **"Software"** (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).
- C. "Product Notice"** means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp
- D. "Software Release"** means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.
- E. "Eligible Ordering Activities"** are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a "Customer". Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as "Executive Customers". All other Eligible Ordering Activities are referred to as "Other Customers".

2. LICENSE TERMS.

- A. General License Grant.** LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.
- B. Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
- C. License Restrictions.** All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer's authorized internal use of the Software. Customer shall not, without LICENSOR's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors; or (iv) transfer Software to an Affiliate or a third party.
- D. Software Releases.** Software Releases shall be subject to the license terms applicable to Software.
- E. Audit Rights.** LICENSOR shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer's business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer the audit shall be scheduled at a mutually acceptable time and shall be subject to Executive Customer's security clearance requirements and systems access requirements. For Executive Customers non-compliant situations are subject to paragraph 2.F. Disputes.
- F. Disputes.** For a EULA with an Executive Customer LICENSOR shall comply with [FAR 52.212-4 \(d\) Disputes](#) for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA's with Other Customers are not subject [FAR 52.212-4 \(d\) Disputes](#).
- G. Reserved Rights.** All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer's prior written consent, nor shall Customer permit any third party to do the same.
- H. Other License Terms.** Some Products are provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product. (i) For Products for which the LICENSOR is the licensor, the terms of this EULA shall prevail over conflicting terms in a clickwrap or shrinkwrap agreement. (ii) With regard to Products for which the LICENSOR is not the licensor, the terms of such clickwrap or shrinkwrap agreement shall be provided to the Executive Customer's Contracting Officer in written form as an attachment to individual quotations for review and approval. Subject to Contracting Officer approval, the clickwrap or shrinkwrap agreement shall prevail over conflicting terms in the EULA with regard to Products for which the LICENSOR is not the licensor.

3. PRODUCT WARRANTY.

- A. Software Warranty.** LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's

requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

C. Customer Remedies. LICENSOR's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR's then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes. LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. INDEMNITY. LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or EMC Corporation, and LICENSOR and/or EMC Corporation shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

5. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer's production systems. To the extent LICENSOR's liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Limitation Period. Unless otherwise required by applicable federal law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.]

E. Suppliers. The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

6. EXPORT CONTROL. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or

use of such Products and technology included therein outside of the United States or other countries (collectively, "Export Laws"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. TERM AND TERMINATION. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

A. EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).

B. For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

8. MISCELLANEOUS.

A. References. LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This EULA, GSA IT Schedule 70, and each purchase order issued pursuant to GSA IT Schedule 70 (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

D. Force Majeure. Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

E. Assignment. Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR's prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

F. Governing Law. To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

EMC CORPORATION
WARRANTY AND MAINTENANCE PRICING TERMS

EMC Corporation provides a variety of warranty and maintenance support offerings for all EMC products. Maintenance terms are set forth EMC Product Warranty and Maintenance Table that is incorporated in the GSA Schedule. The following is a general summary of those terms.¹

EMC Product Support Availability. EMC's product support lifecycle is designed to help customers effectively manage their technology investments. EMC's product lifecycle policy specifies the support duration (the "Primary Support" period) and End-of-Primary-Support (EOPS) date for most EMC products. EMC intends, subject to change at EMC's discretion, to offer product support under EMC's standard product maintenance terms and conditions during a product's Primary Support period. Once a product reaches its EOPS date, EMC may, at its discretion, offer Extended Support for certain software releases or hardware models. Additional information on EMC's support lifecycle policy and Extended Support for EMC hardware and software products can be found on the specific EMC product page, located by searching within the **Support by Product** section of the EMC Online Support site. This information is subject to change at EMC's discretion.

Primary Support²	Extended Support³
Primary support begins when a product is Generally Available (GA).	Extended Support may be available for certain releases of EMC software products and hardware models, at EMC's discretion.
For some EMC software products that are independent of EMC hardware releases, it is EMC's intention, subject to change at EMC's discretion, to support the current and immediately prior software release for the period of three (3) years from the release's GA date. EMC endeavors to publish the applicable EOPS date(s) at GA. This three-year period is referred to as the Primary Support period for the applicable release.	Extended Support, when available, is generally sold in six- (6) month increments and consists of a reduced level of support. Specific terms and conditions for Extended Support will vary by product.
For some EMC hardware products, it is EMC's intention, subject to change at EMC's discretion, to make available EMC's standard support for the period of five (5) years after the applicable End-of-Life (EOL) date of the hardware. The EOL date refers to the	Extended Support requires a current EMC maintenance contract to be in place for the associated product.

¹ This is a general description of EMC warranty and maintenance offerings only. This general description does not modify EMC Warranty or Maintenance terms that are incorporated in the GSA schedule. Please consult the [EMC Product Warranty and Maintenance Table](#) for details.

² Certain terms, limitations and exclusions apply to EMC's support lifecycle policy. In some cases, resolution of an issue may be addressed by requiring a move to a more recent release.

³ For GSA orders Extended Support is available on an Open Market Basis Only. If Extended Support is not available or purchased, End-of-Service Life (EOL) of a product occurs on the End-of Primary-Support date.

date that EMC has discontinued a model number of EMC hardware or software as a product offering, and has removed such model number from EMC's pricing/quoting systems.	
For some platform software products, it is EMC's intention to support the current and immediately prior software release for a period that is coterminous with the related hardware.	

EMC End-of-Service Life Notification. If Extended Support is not available or purchased, End-of-Service Life (EOSL) of a product occurs on the End-of-Primary-Support date. EMC endeavors to give customers notice of a product's End of Service Life to enable them to plan for the retirement of their EMC products. This provides customers with the opportunity to smoothly transition to a more advanced and/or currently supported EMC product. Additional information on EOPS and EOSL dates for EMC products can be found by searching for the specific EMC product within the Support by Product section of the EMC Online Support site.

Equipment Warranty. Most EMC equipment (hardware) is sold with warranties for periods of one to three years depending on the product. Certain EMC equipment products are sold with limited warranties.

Software Warranty. The software warranty covers the media only for ninety (90) days from the date of shipment, or the date of electronic availability, as applicable. The warranty duration for Core Software (the programming or microcode firmware sometimes included by EMC with equipment, at no extra charge, to enable the equipment to perform its basic functions) is the same as the warranty duration of the equipment with which the Core Software is included. Certain EMC software products are sold with limited warranties.

Support Levels. EMC offers three support levels: Basic, Enhanced, and Premium. The descriptions of the Basic, Enhanced, and Premium support options that are incorporated in the GSA schedule along with the support levels for each product, warranty durations, response times, extent of coverage, response times, severity levels and other information can be found in the EMC Product Warranty and Maintenance Table. Not all support levels are available for every product.

Warranty Upgrade. With the original purchase of EMC products, customers have the option to increase the support level for some (not all) products by purchasing a Warranty Upgrade. For example, there are options to increase warranty coverage from Basic to Enhanced; Basic to Premium; or Enhanced to Premium. Warranty Upgrades provide the right to receive an upgraded level of support for the entire warranty period, are invoiced in advance, and prepaid. Warranty Upgrades cannot be prorated.

Equipment Maintenance. If purchased, equipment maintenance begins upon expiration of the equipment warranty period. For products with limited warranty, equipment maintenance begins at the same time as warranty begins. Equipment maintenance can be purchased at the time of original product purchase.

Software Maintenance. Software maintenance is sold as a product and provides the rights to new software releases as made generally available by EMC for the period of software maintenance coverage purchased. Software Maintenance is invoiced at the time of purchase and prepaid.

Maintenance Renewals. For products that have not reached EOSL, EMC may provide customers with the option to renew maintenance, both equipment and software, at the same support level (Basic, Enhanced, or Premium) originally purchased. Once a product reaches EOSL, support will no longer be available and maintenance may not be renewed.

Equipment Maintenance Renewals. When the original warranty or original equipment maintenance period ends, EMC may provide GSA customers with the option to purchase continued equipment support through the maintenance renewal process, until the EOSL date.

Software Maintenance Renewals. When the initial period of prepaid software maintenance ends, software maintenance may be renewed on a prepaid basis only, until the EOSL date.

Equipment Upgrades. Warranty and maintenance for equipment upgrades will be priced at the same support level (Basic, Enhanced, or Premium) that applies to the system in which the upgrade equipment is installed. The applicable warranty or maintenance period will be co-terminus with the warranty or maintenance period that applies to the system in which the upgrade equipment is installed. Annual maintenance prices are prorated on a monthly basis to conform to the co-terminus end date.

Warranty Prices. Except for Warranty Upgrades, warranty is not currently separately priced and applicable warranty support is currently included in the purchase price of the products.

Maintenance, Warranty Upgrade, and Maintenance Renewal Pricing.

The **maintenance list price** for EMC equipment and software maintenance, warranty upgrades, and equipment and software maintenance renewals **is priced as a percentage of** (not discount off) the product commercial list price. As set forth in the tables below, the percentages vary by Component Type within each major Product and Product Family. A limited number of components are priced on a fixed dollar basis as indicated in Table 2, Table 3, and Table 4 attached.

The maintenance list price rates in Table 2, Table 3, and Table 4 are for 12 months of support. The total maintenance list price for system configuration is determined as follows:

1. The commercial list price of each component product is multiplied by the quantity of the product (extended component list price).
2. The extended component list price is multiplied by the applicable list price rate (percentage) from the rate tables attached for the desired level of support (maintenance list price).
3. The maintenance list price is multiplied by the number of years of support required.
4. The individual component maintenance list prices are summed using an aggregating model number.
5. The GSA net price for maintenance is calculated by applying the GSA discount (*discount off maintenance list*) to the total maintenance list price. **The GSA discounts are set forth in Table 1 below.**

For Enterprise Content Division (ECD) Products (Documentum and Captiva):

Annual Maintenance List Pricing can be considered to be 19% of product list price for Basic Support (available only for Pixtools), 23% of product list for Enhanced Support and 27% of product list for Premium Support.

Initial year Maintenance Pricing incorporates the product discount by applying the percentages (19% for Basic Support, 23% for Enhanced support, and 27% for premium support) to the net price

The maintenance renewal price for system configurations for the EMC ECD Products (Documentum and Captiva) products is determined as follows:

1. The previous year's maintenance is increased by 3%.
2. The individual component maintenance list prices are summed using an aggregating model number.

When circumstances require, annual prices can be pro-rated to the actual term of support.

The sum of component level maintenance pricing will appear on the quote under one of several aggregating model numbers that include (but are not limited to) the following examples:

<u>Aggregating Model Number</u>	<u>General Description</u>
M-ENHHW-001	Sum of Enhanced Hardware Support
M-PREHW-001	Sum of Premium Hardware Support
WU-PREHW-001	Sum of Premium Hardware Warranty Upgrade
M-PRESW-001	Sum of Premium Software Support
M-ENHSW-001	Sum of Enhanced Software Support

Because these model numbers only serve to sum up and aggregate component maintenance list prices on a quote, these model numbers do not represent any intrinsic, discreet service or have a unique list price. Aggregating model numbers do not appear on the GSA schedule price list. These models are not open market items because they only serve to sum individual maintenance prices for products that are included on the GSA schedule. Other maintenance aggregating model numbers are used in the quoting system. EMC reserves the right to change maintenance aggregating model numbers without notice.

Prepaid Maintenance Pricing. Also referred to as point-of-sale maintenance, this maintenance is purchased in the initial order and is calculated within the EMC quoting systems. The EMC reseller can provide an EMC "Product Warranty and Maintenance Schedule" for each quote to validate the maintenance calculations substantially in the form of the following illustration. This illustration does not represent actual list prices or discounts.

Model	Description	Qty	Pre-Sold Maint Months	Total Coverage Months	Maintenance Model	Maint List Price(USD)	Total Maint Price(USD)
M-ENHSW-001	ENHANCED SOFTWARE SUPPORT	1				5,900.00	5,310.00
ABC	Software Title 1	1	36	36	M-ENHSW-001	3,000.00	2,700.00
DEF	Software Title 2	1	36	36	M-ENHSW-001	1,700.00	1,530.00
GHI	Software Title 3	1	36	36	M-ENHSW-001	1,200.00	1,080.00

Maintenance Renewal Pricing. Maintenance renewal pricing is offered for previously purchased systems and products installed in specific customer locations. Renewal quotes are based on information from EMC installed base systems, as well as customer provided information. Because maintenance renewal quotes are highly individualized for particular installations of EMC products, renewal quotes are supported by detailed spreadsheets provided with the renewal quote. The "Product Warranty and Maintenance Schedule" is not available for maintenance renewal quotes, and aggregating model numbers are not used in quoting.

End-of-Life (EOL) Date. The EOL date refers to the date that EMC has discontinued a model number of EMC hardware or software as a product offering, and has removed such model number from EMC's pricing/quoting systems. Products that have reached their EOL date are no longer available for purchase, but are eligible for maintenance renewal until the End-of-Primary Support date (see table above). To distinguish products that are eligible for maintenance renewal only the following note is attached to the product description: **"MAINTENANCE AVAILABLE ONLY. PRODUCT NOT AVAILABLE FOR SALE."**

Extended Support. EMC may, at its discretion, offer Extended Support for certain products (see table above), at different terms and pricing than standard support. Extended support is not included in the GSA Schedule and is offered on an Open Market Basis only.

End-of-Service Life (EOSL) Date. Products that have reached their EOSL date are permanently removed from the GSA Schedule price list.

Table 1
STANDARD TRANSFER GSA DISCOUNTS

Maintenance Discount Class	Discount Class Description	SIN	Prepaid Maintenance Included in Original Order	Maintenance Renewals
A	Hardware - Enterprise (Symmetrix, Celerra)	132-12	-	3.28%
B	Hardware - Mid-Tier (CLARiiON, Centera, Atmos, NAS)	132-12	-	3.28%
C	Hardware – Connectrix	132-12	-	3.28%
CL-E	Cloud Edition (VMAX CE)	132-12	-	3.28%
CL-E	Cloud Edition (VMAX CE)	132-33	-	5.29%
D1/D2/D3	Software - Enterprise Platform, Mid-Tier Platform, Multi-platform/Open	132-12/132-33	-	5.29%
DE	Entry Software (BRS: Data Domain)	132-33	-	8.32%
DH	High-End Software (BRS: Data Domain, Avamar, Disk Library, Networker)	132-33	-	8.32%
DM	Midrange Software (BRS: Data Domain, Atmos, Disk Library)	132-33	-	8.32%
E	EMC 3rd Party Hardware & Software, Switches	132-12	43.58%	3.28%
E	EMC 3rd Party Hardware & Software, Switches	132-33	43.58%	5.29%
EN-H	Hardware – VMAX 10K/20K/40K	132-12	-	3.28%
EN-HM	Hardware Maintenance - VMAX 10K/20K/40K	132-12	-	43.58%
EN-S	Software – VMAX 10K/20K/40K	132-33	-	5.29%
EN-SM	Software Maintenance - VMAX 10K/20K/40K	132-33	-	43.58%
G	Hardware Maintenance	132-12	14.36%	14.36%
H	Software Maintenance - Mid-Tier Platform	132-33	43.58%	43.58%
H3	Software Maintenance - Multi-platform	132-33	43.58%	43.58%
J	Server Flash, AX/NX, Insignia (HW & SW)	132-12	-	3.28%
J	Server Flash, AX/NX, Insignia (HW & SW)	132-33	-	5.29%
K	Select	132-12	-	3.28%
K	Select	132-33	-	5.29%
PE	Systems (DDR arrays and Appliances) and DDOS SW	132-12	31.49%	20.41%
PH	Systems (DDR arrays and Appliances) and DDOS SW, DL3D 1500/3000/4000	132-12	32.50%	20.41%
PM	Systems (DDR arrays and Appliances) and DDOS SW, DLm 1000/2000/6000/8000	132-12	33.51%	20.41%
UE	Unified Entry Level (VNX)	132-12	-	3.28%
UE	Unified Entry Level (VNX)	132-33	-	5.29%
UM	VNX2 – Hardware and Software	132-12/132-33	-	5.29%
UM-H	VNX5200/5400/5600/5800/7600/8000/-F	132-12	-	3.28%
UM-S	Software Maintenance - Unified Mid-Tier	132-33	-	5.29%
V	ViPR, VDSC, ECS Maintenance – Hardware and Software	132-12/132-33	-	5.29%
VPLEX	VPLEX – Hardware and Software	132-12	-	3.28%
VPLEX	VPLEX – Hardware and Software	132-33	-	5.29%
XT	XtremIO – Hardware and Software	132-12	-	3.28%
XT	XtremIO – Hardware and Software	132-33	-	5.29%

EMC Maintenance List Price Rates are set forth in Table 2, Table 3, and Table 4 that follow.

For ECD Products(Documentum and Captiva):

Annual Maintenance List Pricing can be considered to be 19% of product list price for Basic Support (available only for Pixtools), 23% of product list for Enhanced Support and 27% of product list for Premium Support.
Initial year Maintenance Pricing incorporates the product discount by applying the percentages (19% for Basic Support, 23% for Enhanced support, and 27% for premium support) to the net price

The maintenance renewal price for system configurations for the EMC ECD Products (Documentum and Captiva) products is determined as follows:

1. The previous year's maintenance is increased by 3%.
2. The individual component maintenance list prices are summed using an aggregating model number.

EMC CORPORATION

ADDITIONAL TERMS/DOCUMENTATION

- **SOFTWARE USE RIGHTS**
- **BASIC/ENHANCED/PREMIUM SUPPORT TERMS**
- **WARRANTY/LIMITED WARRANTY/MAINTENANCE TERMS**

Scroll down to next page.

Enterasys Networks, Inc.
50 Minteman Road
Andover, MA 01810

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ENTERASYS NETWORKS, INC.

ENTERASYS NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

IMPORTANT: THIS DOCUMENT IS AN AGREEMENT ("AGREEMENT") BETWEEN YOU, THE ORDERING ACTIVITY/FEDERAL AGENCY, AND ENTERASYS NETWORKS, INC. ("ENTERASYS") THAT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SOFTWARE CONTAINED ON CD-ROM OR OTHER MEDIA. YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS BEFORE INSTALLATION AND USE OF ANY SOFTWARE PROGRAMS PROVIDED BY ENTERASYS. BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO BECOME BOUND BY THE TERMS, CONDITIONS AND RESTRICTIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH AND ACCEPT THE TERMS OF THIS AGREEMENT, YOU SHOULD PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ENTERASYS NETWORKS, 50 MINUTEMAN ROAD, ANDOVER, MASSACHUSETTS 01810 AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED. QUESTIONS REGARDING THIS LICENSE OR LEGAL NOTICES SHOULD BE FORWARDED TO ENTERASYS NETWORKS, INC., ATTN: LEGAL DEPARTMENT, 35 INDUSTRIAL WAY, ROCHESTER, NEW HAMPSHIRE 03867.

1. LICENSE. Subject to the terms and restrictions set forth in this Agreement, ENTERASYS NETWORKS, INC. ("ENTERASYS") grants you a non-exclusive non-transferable (except as provided herein) license to use the enclosed machine-readable form of software programs or code contained in firmware, chips or other media ("Programs"), as well as the accompanying documentation (the Programs, the media embodying the Programs, and the documentation are collectively referred to in this Agreement as the "Programs") delivered to you for use on or with the ENTERASYS device if You agree to the following terms and conditions:

2. COPYRIGHT. The Programs, and all related documentation, are protected by copyright and title to all programs is retained by ENTERASYS and ENTERASYS' third party licensors. You shall not copy or otherwise use the Programs, in whole or part, except as expressly permitted in this Agreement. You must reproduce and maintain the copyright notice on any authorized copy you make or use of the Programs. You shall not sell, lease, transfer, sublicense, or otherwise make available or permit access to the Programs, or any portion thereof, to any other party.

3. AUTHORIZATION. You are authorized to make multiple copies of the Programs and the accompanying documentation provided that:

- You received this license document and accompanying media and documentation from ENTERASYS.
- You copy the Programs only to be used with ENTERASYS-supplied devices that are used with the Programs.
- You limit copies to devices that are owned or controlled by You.
- You include the ENTERASYS and ENTERASYS' third party licensors' copyright notice on all copies of the Programs and documentation.

You may physically transfer the Programs and this License, along with the related ENTERASYS device, if applicable, to another party only if (i) the other party accepts the terms, conditions and restrictions of this License, (ii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to ENTERASYS, (iii) the related ENTERASYS device, for Programs designed solely to operate on ENTERASYS devices, is also transferred to the other party, and (iv) you comply with all applicable laws including any import/export control regulations.

4. LIMITED WARRANTY. ENTERASYS warrants that the Programs will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from the date of shipment. This warranty is void if failure is the result of accident, abuse or misuse.

ENTERASYS warrants that any magnetic diskettes on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such diskette should occur during this 90-day period, the diskette may be returned to ENTERASYS NETWORKS, INC. at 50 Minuteman Road, Andover, Massachusetts 01810 U. S. A., and ENTERASYS will replace the diskette without charge to you. ENTERASYS shall have no responsibility to replace diskettes if the failure of diskettes results from accident, abuse or misuse of the diskettes.

The program contains third party software which is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the program could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, ENTERASYS and ENTERASYS' third party licensors specifically disclaim any express or implied warranty of fitness for High Risk Activities.

EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS ARTICLE 4, ENTERASYS AND ENTERASYS' THIRD PARTY LICENSORS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This limited warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.

5. LIMITATION OF LIABILITY. Your exclusive remedy and the entire liability of ENTERASYS and ENTERASYS' third party licensors related to the Programs shall be, at ENTERASYS' option: (i) refund of the price paid for the Programs, (ii) correction of the Programs so they perform as warranted, or in the case of magnetic disk failure, expressly limited to replacement of diskettes as provided above. In no event will ENTERASYS or anyone else who has been involved in the creation, production or delivery of the Programs be liable for any damages, including, without limitation, direct, incidental or consequential damages, loss of anticipated profits or benefits, resulting from the use of the Programs, even if ENTERASYS has been advised of the possibility of such damages.

6. TERM. The Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. You agree that, upon such termination, you will destroy all copies of the Programs and related documentation. Sections 2, 3, 4, 5, 6, 7, 8, and 9 shall survive termination of this Agreement for any reason.

7. CONFIDENTIALITY. You agree that the Programs are confidential and proprietary to ENTERASYS and ENTERASYS' third party licensors. Accordingly, you may not decompile, reverse engineer or otherwise manipulate the Programs. You agree to use Your best efforts and take all reasonable steps to ensure that no unauthorized personnel shall have access to the Programs and that no unauthorized copy, publication, electronic transmission, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify ENTERASYS of any unauthorized access or use thereof.

8. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND. If you are licensing the Software on behalf of the U.S. Government ("Government"), the following provisions apply to you. If the Software is supplied to the Department of Defense ("DoD"), it is classified as "Commercial Computer Software" under paragraph 252.227-7014 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") (or any successor regulations) and the Government is acquiring only the license rights granted herein (the license rights customarily provided to non-Government users). If the Software is supplied to any unit or agency of the Government other than DoD, it is classified as "Restricted Computer Software" and the Government's rights in the Software are defined in paragraph 52.227-19 of the Federal Acquisition Regulations ("FAR") (or any successor regulations) or, in the case of NASA, in paragraph 18.52.227-86 of the NASA Supplement to the FAR (or any successor regulations). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. The Contractor for the Programs is ENTERASYS NETWORKS, INC., 50 Minuteman Road, Andover, Massachusetts 01810.

9. GENERAL. The rights of ENTERASYS and Your obligations under this Agreement shall inure to the benefit of ENTERASYS' successors and assigns. ENTERASYS waiver of any right shall not constitute a waiver by ENTERASYS or its licensors of that or any other right in the future. The rights and obligations of the parties to this Agreement shall be governed and construed in accordance with the laws Federal laws of the United States without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

YOUR USE OF THE PROGRAMS ACKNOWLEDGES THAT YOU HAVE READ THIS END-USER SOFTWARE LICENSE, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, CONDITIONS AND RESTRICTIONS. YOU FURTHER AGREE THAT THIS LICENSE IS THE COMPLETE AND EXCLUSIVE STATEMENT OF YOUR AGREEMENT WITH ENTERASYS AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, NAMELY THE LICENSING OF THIS PRODUCT.

Extreme Networks, Inc.
145 Rio Robles
San Jose, CA 95134

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

EXTREME NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **DEFINITIONS.** "Affiliates" means any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the party specified. "Server Application" shall refer to the License Key for software installed on one or more of Your servers. "Client Application" shall refer to the application to access the Server Application. "Licensed Materials" shall collectively refer to the licensed software (including the Server Application and Client Application), Firmware, media embodying the software, and the documentation. "Concurrent User" shall refer to any of Your individual employees who You provide access to the Server Application at any one time. "Firmware" refers to any software program or code imbedded in chips or other media. "Licensed Software" refers to the Software and Firmware collectively.

2. **RESERVED.**

3. **GRANT OF SOFTWARE LICENSE.** Extreme will grant You a non-transferable, non-exclusive license to use the machine-readable form of the Licensed Software and the accompanying documentation if You agree to the terms and conditions of this Agreement. You may install and use the Licensed Software as permitted by the license type purchased as described below in License Types. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

4. **LICENSE TYPES.**

- **Single User, Single Computer.** Under the terms of the Single User, Single Computer license, the license granted to You by Extreme when You install the License Key authorizes You to use the Licensed Software on any one, single computer only, or any replacement for that computer, for internal use only. A separate license, under a separate Software License Agreement, is required for any other computer on which You or another individual or employee intend to use the Licensed Software. A separate license under a separate Software License Agreement is also required if You wish to use a Client license (as described below).
- **Client.** Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Software on your server and allow the specific number of Concurrent Users shown on the relevant invoice issued to You for each Concurrent User that You order from Extreme or Your dealer, if any, to access the Server Application. A separate license is required for each additional Concurrent User.

5. **RESERVED. RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS.** Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompile, disassemble, electronically transfer, or reverse engineer the Licensed Software, or to translate the Licensed Software into another computer language. The media embodying the Licensed Software may be copied by You, in whole or in part, into printed or machine readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including the original media, in your possession for said purposes without Extreme's prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. You may not copy or reproduce the documentation. You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You may modify the machine-readable form of the Licensed Software for (1) your own internal use or (2) to merge the Licensed Software into other program material to form a modular work for your own use, provided that such work remains modular, but on termination of this Agreement, You are required to completely remove the Licensed Software from any such modular work. Any portion of the Licensed Software included in any such modular work shall be used only on a single computer for internal purposes and shall remain subject to all the terms and conditions of this Agreement. You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

6. **TITLE AND PROPRIETARY RIGHTS**

(a) The Licensed Materials are copyrighted works and are the sole and exclusive property of Extreme, any company or a division thereof which Extreme controls or is controlled by, or which may result from the merger or consolidation with Extreme (its "Affiliates"), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

7. **PROTECTION AND SECURITY.**

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized personnel shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Extreme of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme or its Affiliates and/or its/their software suppliers.

8. **MAINTENANCE AND UPDATES.** Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of an Extreme Service and Maintenance Agreement (Exhibit A). Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

9. **RESERVED.**

10. **EXPORT REQUIREMENTS.** You are advised that the Software is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government); or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11. **UNITED STATES GOVERNMENT RESTRICTED RIGHTS.** The Licensed Materials (i) were developed solely at private expense; (ii) contain "restricted computer software" submitted with restricted rights in accordance with section 52.227- 14 RESTRICTED RIGHTS and its successors, and (iii) in all respects is proprietary data belonging to Extreme and/or its suppliers. For Department of Defense units, the Licensed Materials are considered commercial computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth herein.

12. **LIMITED WARRANTY AND LIMITATION OF LIABILITY.** The only warranty Extreme makes to You in connection with this license of the Licensed Materials is that if the media on which the Licensed Software is recorded is defective, it will be replaced without charge, if Extreme in good faith determines that the media and proof of payment of the license fee are returned to Extreme or the dealer from whom it was obtained within ninety (90) days of the date of payment of the license fee.

NEITHER EXTREME NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. ONLY TO THE EXTENT SUCH EXCLUSION OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF SUCH IMPLIED WARRANTY IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE LICENSED MATERIALS. IN NO EVENT WILL EXTREME OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF EXTREME OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXTREME OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary from state to state. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Extreme's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13. RESERVED.

14. Reserved.

EXHIBIT A

ExtremeWorks Support Program

Extreme Networks, Inc. ("Extreme") agrees to provide the ExtremeWorks Support Program and related Support Plans to you pursuant to the following terms and conditions.

1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Authorized Users" means those individuals authorized by Ordering Activity to use the Services on behalf of Ordering Activity.

1.2 "Authorized Resellers" means those companies (a) authorized by Extreme to resell, promote or deliver the ExtremeWorks Support Program to the marketplace, and (b) through which Ordering Activity has purchased the ExtremeWorks Support Program.

1.3 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.4 "End User" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "End User Documentation" means Product documentation, Product specifications and other related materials.

1.6 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights, (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.7 Reserved.

1.8 “Products” mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to you in a commercial package.

1.9 “Releases” mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.10 “Services” mean the services provided by Extreme under the ExtremeWorks Support Program, Premier Services Program (PSP) Foundation Services or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide.

1.11 “Software” or “Software Products” mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products. .

1.12 “Trademarks” mean “Extreme Networks” and the applicable Product trademarks as listed in Extreme’s usage guidelines, subject to revision from time to time in Extreme’s sole discretion.

1.13 “Update” means a new version of a Software Product that includes defect corrections, bug fixes and/or minor enhancements that operate within the framework of the specifications for the current Upgrade of the Software Product, but does not include substantive features or functions not performed by the prior Release of the Software Product.

1.14 “Upgrade” means a new version of a Software Product that includes substantive features or functions not performed by the prior Release of the Software Product.

2. Services. The scope of the Services provided to Ordering Activity hereunder is based on the support plan purchased by Ordering Activity for each unit of the Product purchased. Certain on-site Services may not be available in some geographic regions or may require a “phase-in” period before they can be made available to Ordering Activity. Extreme shall have the right to use subcontractors to perform all or part of the Service(s), as it deems appropriate. To be eligible for the PSP Foundation Service, Ordering Activity must have Extreme equipment with current maintenance support entitlements. Future Services are deemed added to this Agreement at such time as they are added to the Schedule Contract,. Extreme has the right to discontinue the distribution or availability of any Service at any time upon sixty (60) days’ prior notice. In accordance with the Support Plan purchased for the applicable Product, the Services may include the following:

2.1 Releases. Extreme or its authorized representatives will make available to Ordering Activity all Releases made generally available by Extreme only for Products for which Ordering Activity has an active contract for Services. The content of all Releases shall be decided upon by Extreme in its sole discretion. Updates for Products for which Ordering Activity has an active contract for Services shall be provided to Ordering Activity at no additional charge during the term of this Agreement. Extreme shall impose additional charges for Upgrades. Ordering Activity shall install only one (1) copy of a Release for each Product under an active contract for Services, and Ordering Activity is prohibited from installing Releases on any Product which is not covered under an active contract for Services.

2.2 Corrections. Extreme shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in any Product for which Services have been purchased with a level of effort commensurate with the severity level; provided that Extreme shall have no obligation to correct all Defects in the Products. Ordering Activity shall notify Extreme TAC of the nature and severity of such Defect and the specific serial number of the applicable Product, and provide Extreme with enough information to locate and reproduce the Defect. Extreme shall not be responsible for correcting any Defect not attributable to Products or any Defect listed under Section 3 (“Exclusions”).

3. Exclusions. The Services provided by Extreme hereunder will not include support and maintenance of any third party software or hardware not provided by Extreme. Extreme is not required to provide any services for problems arising out of: (i) Ordering Activity’s failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas, GBICs and miniGBICs. Extreme shall only be obligated to support the then-current revision of the Products and the immediately prior revision. 4. Ordering Activity Obligations.

4.1 Ordering Activity Assistance. Ordering Activity agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Ordering Activity information services, technical personnel, facilities, and premises as required in connection with the performance of the Services as long as Extreme complies with all of Ordering Activity’s security requirements. To efficiently resolve problems and perform local hardware diagnostics, Ordering Activity shall provide modem level access for all Ordering Activity sites. Ordering Activity may provide passwords and/or activate the modem when needed. Ordering Activity shall be responsible for any and all cables, hardware or software not provided by Extreme. Ordering Activity’s failure to provide such access or information may delay the Services and/or result in Extreme’s inability to perform the Services; in such cases, Extreme shall not be liable for any consequences relating to or resulting from such delay or failure to perform.

4.2 Contact People. Ordering Activity shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Ordering Activity’s organization to serve as the primary contacts between Ordering Activity and Extreme and to receive support as provided herein. Ordering Activity shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Ordering Activity’s support inquiries shall be initiated through these primary contacts.

4.3 Restrictions on Copying and Reverse Engineering. As a material consideration for this Agreement, Ordering Activity expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Ordering Activity will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme’s sole discretion.

4.4 No Removal of Markings. Ordering Activity agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

5. Reserved.

6. Support for End of Life.

6.1 Product End of Life. In the event Extreme discontinues or otherwise ceases to make available to its customers a particular Product model number, Extreme will continue to offer Services for such Product in accordance with its then-current End of Life Policy available at www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf. The Services shall remain in effect with respect to other Products, if any, then covered.

6.2 Support Plan End Of Life. Extreme reserves the right to discontinue any Support Plan in its sole discretion upon sixty (60) days' notice, by email, notification on Extreme's website, or any other method permitted under this Agreement, to Ordering Activity; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period.

7. RESERVED. 8. Return Process. If Ordering Activity is returning a Product to Extreme, Ordering Activity must first obtain a Return Material Authorization ("RMA") number from Extreme. Ordering Activity must return the entire contents of the defective Product and dated End User proof of purchase for the defective Product, if requested by Extreme, marked with the RMA number, to a receiving point designated by Extreme. Shipping cartons that are not marked with RMA numbers will be rejected by Extreme and returned to Ordering Activity. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Ordering Activity retains sole responsibility for risk of loss or damage to Products during shipment to and from Extreme. Products returned to Extreme may be repaired or replaced by Extreme at Extreme's sole discretion. Replacement Products may be new or refurbished Products.

9. Ownership of Intellectual Property Rights; License; Non-Disclosure.

9.1 Intellectual Property Rights. Ordering Activity acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. Ordering Activity will take all reasonable measures to protect Extreme's Intellectual Property Rights in any Product. Except as expressly provided herein, Ordering Activity is not granted any right to any Intellectual Property Rights with respect to any Product.

9.2 License. All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

10. Warranty. All Updates provided hereunder are warranted for the remaining warranty period of the original Software Product, if any, as specified in the warranty card which shipped with the original Software Product. All Upgrades are warranted as set forth in the warranty card for such Upgrade. Replacement Products provided under the Services are warranted for the remaining warranty period of the original Product, if any, as specified in the warranty card which shipped with the original Product. Nothing in the Services shall be construed as expanding or adding to the warranty set forth on the warranty card. Extreme will use all reasonable commercial efforts to provide the support requested by Ordering Activity under this Agreement in a professional and workmanlike manner. In the event that Extreme fails to meet this warranty, Extreme may reperform the Services, but Extreme cannot guarantee that every question or problem raised by Ordering Activity will be resolved. EXTREME WARRANTS THE SERVICES ONLY TO ORDERING ACTIVITY AS THE END USER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND. EXTREME EXPRESSLY DISCLAIMS ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED (in fact or by operation of law), STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, TERM OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY, TERM OR CONDITION THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR COURSE OF PERFORMANCE.

Forcepoint LLC.
10900-A Stonelake Blvd, 3rd Floor
Austin, TX 78759

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

FORCEPOINT, LLC. LICENSE, WARRANTY AND SUPPORT TERMS

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or "Seat" means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee's email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"GSA Customer Purchase Order" ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.

"License" means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database, if any) for the term set forth in the Order, and in accordance with this Agreement and the Order.

"License Fees" means the agreed upon license fees for the Software (including the Database, if any) included in an Order based on the GSA Schedule Price List.

"Licensee" means the ordering activity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.

"Maintenance" means a limited-term, non-exclusive, non-sublicensable, nontransferable right to: (a) receive the technical support described in Section 5, (b) receive Software Upgrades, if any, (c) receive and use the Database Updates, if any, and (d) use SaaS Email and SaaS Web (when set forth in the Order), in accordance with this Agreement and the Order.

"Maintenance Term" means the agreed upon time period for the provision of Maintenance in an Order. **"Permitted Capacity"** means the number of Devices, Seats, Users, or other license metrics as set forth in the Order.

"Products" means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS and Forcepoint packaged service offerings.

"SaaS" or "Software as a Service" means Forcepoint's software-as-a-service offerings, including SaaS Web and/or SaaS Email.

"Software" means Forcepoint's proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee. **"User"** means (i) any person utilizing Licensee's network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as "personnel," hereinafter), or guest of Licensee (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee's email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User).

"Virus" or "Malware" means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails Per Seat" or "Average Emails Per User" means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail" means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay" means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server's email network.

"Spam" means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth Per Seat" or "Average Bandwidth Per User" means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

“Web Content” means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

“SaaS Web” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance, identified in the Order solely for Licensee's internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its location. Licensee shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee's use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee's use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Provision of SaaS.

3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Maintenance Term. The then-current Service levels for SaaS are attached as Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.

3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Licensee's network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Licensee's responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

3.5 Licensee must not use SaaS Email as an Open Relay.

3.6 Licensee must not use the Products to distribute Spam or Malware.

3.7 If in any one (1) calendar month the Average Emails per Device, Seat or Average Emails Per User is greater than ten thousand (10,000), Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which SaaS Email scans inbound or outbound email. Licensee's Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.

3.8 Licensee's Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.

4. Licensee Obligations.

4.1 Licensee will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.

4.2 Licensee must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense's express prior written approval.

4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings ("Claims") made or brought against Forcepoint by a third party alleging or related to Licensee's (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.

5. Technical Support.

5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint's Technical Support Policies which are provided for informational purposes as Exhibit A and can be found <https://www.forcepoint.com/technical-support-termsservice-anddescription>. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Permitted Capacity. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

5.2 Forcepoint's obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

6. Intellectual Property Rights. The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual

property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement. Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent.

7. Protection and Restrictions.

7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party's personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

7.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for its internal business purposes. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for its personnel's compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

8. Reserved.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use ("Warranty Period"). Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee's requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee's written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees

paid for the affected Product. This paragraph sets forth Licensee's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

11. **Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint's obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. **Term and Termination.**

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products ends.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new License. Licensee's continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.

13. **Compliance with Laws.** Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

14. Rights of Government Licensees. The Products meet the definition of “commercial item” in Federal Acquisition Regulation (“FAR”) 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

15. Export. The Products are subject to export controls of the United States (“Export Controls”). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries (“Prohibited Country” or “Prohibited Countries”). It also prohibits export or reexport of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S.

Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the “Lists”). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles (“Prohibited Uses”). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

16. Compliance. Subject to Government security requirements, Forcepoint has the right to monitor the Licensee's systems to confirm its authorized use of the Products. Upon Forcepoint's request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.

17. General. For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email Licensee may choose to “opt-out” of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and “opting out” it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers, subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee's and its personnel's use of the Products for its own purposes outside of the Agreement. Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.

Section - EXHIBIT A FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Licensees' use of Forcepoint Products. Licensees are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support, Premium Support, and Mission Critical Support offerings are additional charge support options, and are only provided after Licensee has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Through the combination of available resources, Licensee can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Licensees receive access to:
 - 24x7x365 online support located at: [Support](#)
 - the Knowledgebase and Documentation
 - the Customer Forum
 - Tech Alerts Maintenance
 - download software updates and patches
 - submit and track support cases
 - Five (5) incidents⁴ per Maintenance year for telephone and online access to technical support engineers during normal business hours for the region where Licensee is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

- Address Licensee open cases in a timely, professional and courteous manner
- Assign a trouble case number used to track status and as a reference for Licensee inquiries
- Communicate the status of open cases
- Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:
 - 24/7 support for Severity Level 1 & 2 issues
 - No limit on the number of incidents per Maintenance year for telephone and online access to technical support engineers
 - Priority access to technical support engineers
 - Priority support
 - Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on [Support](#) at: [Global Technical Support Programs](#)

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:
 - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Licensee's technical issues
 - Premium Priority access to technical support engineers
 - Premium Priority support
4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Licensee to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Licensee's environment, the TAM will work with Licensee to:
 - Provide strategic support planning around Licensee's use of the Forcepoint Products
 - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Licensee receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance ○ Available for an annual on-site visit
- Collaborative strategic support planning

⁴ An "incident" is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year maintenance holders may aggregate and use the allotted incidents at any time during the then-current Maintenance Term. Incidents do not rollover to a renewal Maintenance Term. Assisted support for SaaS support will not count as an incident.

These benefits are described in more detail at: [Global Technical Support Programs](#)

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Licensee in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Licensee to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Licensee will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Licensee on a global level. Upon gaining an understanding of Licensee's environment, the GAM and regional TAMs will work with Licensee to:

- Provide strategic support planning around Licensee's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Licensee receives access to:

- Technical Account Manager:
 - o Expedited case handling and escalation path o Account related inquiries and assistance
- Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

6. **Forcepoint Mission Critical Support Elite:** Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support's Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Licensee for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: [Global Technical Support Programs](#)

7. **Forcepoint Hardware Support:** Hardware support for Forcepoint appliances is available to licensees with current Maintenance for Forcepoint software applications running on the hardware. Support for hardware is available only during the Maintenance Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- "Retain your hard drive" option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Licensee's business location on record (see Section 10, Licensee Responsibilities)

These benefits are described in more detail at: www.websense.com

For non-Forcepoint branded hardware, Licensee must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times:** Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Licensee by a member of the Forcepoint Technical Support team or by the Licensee online at [Support](#).

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:

For all Forcepoint Products other than Forcepoint SaaS Products:

Severity Level	Initial Response		
	Standard	Premium	Mission Critical

	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite
Severity One (highest severity) Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes
Severity Two Business is disrupted but functioning. - a Forcepoint product's functionality is severely impacted - Mission critical applications or the majority of users are impacted.	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour
Severity Three Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours
Severity Four (lowest severity) A request for information. - Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day

Hardware On-Site Parts Replacement Response Times:

Hardware Appliance	Initial Response (after phone-based troubleshooting is completed)		
	Standard Support	Premium & Premium Priority Support	Mission Critical Support (including Global & Elite)

V10000 M5000 M7500 M10000	Not Available	Standard 3-Year, 4-Hour Onsite Parts Replacement ⁵ Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
X10G	Not Available	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)

For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

Severity Level	Initial Response			Resolution Target
	Standard	Premium	Mission Critical	

⁵ Subject to service availability within the service location. For additional information on service availability and locations visit: [Support](#) ³

Standard Support for V5000 is available only with maintenance purchased to Forcepoint Web Security.

	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite	
One - Service unavailable or, if applicable, Virus infection occurring	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes	As soon as possible but no later than within one business day of the call
Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour	As soon as practicable but within two business days or as otherwise agreed between Forcepoint and the customer
Three - Service is available, but technical questions or configuration issues	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours	As soon as practicable or as otherwise agreed between Forcepoint and the customer
Four – Information Issues, reporting questions, password resets	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day	At the time of response or as soon as practicable thereafter or as otherwise agreed between Forcepoint and the customer

9. **Service Level Guidelines: Response Time and Request Resolution⁶:**

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
- o Business hours are Monday through Friday, during the hours set forth in the region where Licensee resides as set forth at: [Contact Support](#) ("Business Hours") o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Licensees.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Licensee on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: [Target Response Times](#)

10. **Licensee Responsibilities:** In order to efficiently resolve problems, it is important that there be clear and effective communications between Licensee and Forcepoint. The first step of the process requires an accurate reporting of the problem by Licensee. Licensee will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Licensee name
- Maintenance Key information
- Support PIN of the day for Licensee's Cloud security account
- Technical contact information including: name, telephone number and email address
- Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
- Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Licensee should retain and use this case number in order to facilitate future communications regarding the matter.

⁶ Service levels are applicable for the software configurations described at [Certified Product Matrix](#). Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.

In order to receive on-site parts replacement for a hardware Severity One problem, Licensee must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.⁷ Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

- Licensee must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration⁸
- Updates to a physical location must be completed prior to dispatching of authorized technicians
- Licensee or Licensee's authorized representative must be available when the service technician arrives, or the service technician will not be able to service the hardware⁹
- Missed service calls due to Licensee's unavailability may result in additional charges for the follow-up service call

be provided where:

- Hardware is repurposed or modified from its original configuration
- Hardware has missing or altered serial numbers or Service Tags
- Hardware has been serviced by someone other than a Forcepoint-authorized service provider
- Premium or Mission Critical Support maintenance has expired

11. **Technical Support Channels:** There are two ways for Licensees to engage support:

- Open a case online at: [Support](#)
- Open a case via telephone: [Contact Support](#)⁸

12. **Support Escalation Channels:** If after following the procedures for creation of a technical support case Licensee desires to escalate a support issue, the following escalation path to a Technical Support Manager in Licensee's region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

Technical Support Americas		1-858-458-2940
Technical Support EMEA		+44-203 02 444 01
Technical Support APAC	Australia/New Zealand:	+61 2 9414 0033
	India:	+1-858-332-0061
	China, Japan, SE Asia:	+86 (10) 5884-4200

Escalation contacts are available 24 hours a day, 7 days a week to service Licensee's Severity 1 business needs.

⁷ A service technician will only be dispatched after Forcepoint and Licensee have concluded phone-based troubleshooting and determined that a Severity One problem exists.

⁸ Registrations may take up to 10 business days to complete.

⁹ In the event that Licensee is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. ⁸ Toll-free numbers are provided for Licensees of Premium and Mission Critical Support in some geographies.

Section - EXHIBIT B

Security Service Level Agreement

1. Terms and Conditions

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at [Subscription Agreement](#). The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at [Forcepoint SaaS Security Service Level Agreement](#).

1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A "Service Credit" entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.

1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Security service, where the Subscriber has been notified of the maintenance no less than five (5) days in advance.
- The Subscriber's applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Agreement.
- The Subscriber has used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint's reasonable control as set out in the Forcepoint Subscription Agreement.

1.5 The remedies set forth in these SLAs are the Subscriber's sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement.

2. SLAs for SaaS Email Security

2.1 Message Tracking.

• For 95% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email: Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).

• If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 Service Availability

• The SaaS Email Security service will be available 99.999% of the time.

• SaaS Email Security "Service Unavailability" means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint's published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

• In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 Service Management

• For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.

• If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 Spam Detection Rates

• Spam will be detected at a rate of 99% or above during each calendar month for Subscriber's use of the antispam service.

• The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.

• In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month's Service Credit.

2.5 Virus Detection

• For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This excludes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded.

• A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Email Security service, at least thirty (30) minutes before the time the

email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 2.5 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.

3. SLAs for SaaS Web Security

3.1 Service Availability

- The SaaS Web Security service will be available 99.999% of the time.

- SaaS Web Security "Service Unavailability" means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint's published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

- In the event of Service Unavailability for 0.001% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.

3.2 Virus Detection

- Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.

- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.

4. SLAs for Email Archiving

4.1 Service Availability

- The SaaS email archiving service will be available 99.99% of the time over a calendar month.

- SaaS email archiving "Service Unavailability" means the inability of the email archiving server to receive and transmit Subscriber's requests to store and retrieve archived email in conformance with Forcepoint's published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

- In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each calendar month where Service Unavailability exceeds 0.

. FORCEPOINT LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or "Seat" means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee's email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"GSA Customer Purchase Order" ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.

"License" means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database, if any) for the term set forth in the Order, and in accordance with this Agreement and the Order.

"License Fees" means the agreed upon license fees for the Software (including the Database, if any) included in an Order based on the GSA Schedule Price List.

"Licensee" means the ordering activity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.

"Maintenance" means a limited-term, non-exclusive, non-sublicensable, nontransferable right to: (a) receive the technical support described in Section 5, (b) receive Software Upgrades, if any, (c) receive and use the Database Updates, if any, and (d) use SaaS Email and SaaS Web (when set forth in the Order), in accordance with this Agreement and the Order.

"Maintenance Term" means the agreed upon time period for the provision of Maintenance in an Order. **"Permitted Capacity"** means the number of Devices, Seats, Users, or other license metrics as set forth in the Order.

"Products" means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS and Forcepoint packaged service offerings.

"SaaS" or "Software as a Service" means Forcepoint's software-as-a-service offerings, including SaaS Web and/or SaaS Email.

"Software" means Forcepoint's proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee. **"User"** means (i) any person utilizing Licensee's network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as "personnel," hereinafter), or guest of Licensee (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Licensee's email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User).

"Virus" or "Malware" means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails Per Seat" or "Average Emails Per User" means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail" means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay" means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server's email network.

"Spam" means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth Per Seat" or "Average Bandwidth Per User" means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

"Web Content" means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

“SaaS Web” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance, identified in the Order solely for Licensee's internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its location. Licensee shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee's use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee's use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Provision of SaaS.

3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Maintenance Term. The then-current Service levels for SaaS are attached as Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.

3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Licensee's network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Licensee's responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

3.5 Licensee must not use SaaS Email as an Open Relay.

3.6 Licensee must not use the Products to distribute Spam or Malware.

3.7 If in any one (1) calendar month the Average Emails per Device, Seat or Average Emails Per User is greater than ten thousand (10,000), Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which SaaS Email scans inbound or outbound email. Licensee's Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.

3.8 Licensee's Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.

4. Licensee Obligations.

4.1 Licensee will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.

4.2 Licensee must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense's express prior written approval.

4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings (“Claims”) made or brought against Forcepoint by a third party alleging or related to Licensee's (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.

5. Technical Support.

5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint's Technical Support Policies which are provided for informational purposes as Exhibit A and can be found <https://www.forcepoint.com/technical-support-termsservice-anddescription>. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Permitted Capacity. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

5.2 Forcepoint's obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

6. Intellectual Property Rights. The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and

Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement. Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent.

7. Protection and Restrictions.

7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed

"confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing

Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party's personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that

certain information be released, despite being characterized as "confidential" by the vendor.

7.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for its internal business purposes. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for its personnel's compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

8. Reserved.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use ("Warranty Period"). Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee's requirements, (iii) operate without interruption or error, (iv) always locate or block access to or location of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee's written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying

Documentation, (iii) Licensee's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

11. **Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint's obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. **Term and Termination.**

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products ends.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new License. Licensee's continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.

13. **Compliance with Laws.** Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

14. **Rights of Government Licensees.** The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is "commercial computer software" and applicable

Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

15. **Export.** The Products are subject to export controls of the United States ("Export Controls"). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries ("Prohibited Country" or "Prohibited Countries"). It also prohibits export or reexport of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S.

Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the "Lists"). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles ("Prohibited Uses"). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

16. **Compliance.** Subject to Government security requirements, Forcepoint has the right to monitor the Licensee's systems to confirm its authorized use of the Products. Upon Forcepoint's request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.

17. **General.** For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email. Licensee may choose to "opt-out" of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and "opting out" it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers, subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee's and its personnel's use of the Products for its own purposes outside of the Agreement. Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.

Section - EXHIBIT A
FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Licensees' use of Forcepoint Products. Licensees are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support, Premium Support, and Mission Critical Support offerings are additional charge support options, and are only provided after Licensee has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Through the combination of available resources, Licensee can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Licensees receive access to:
 - 24x7x365 online support located at: [Support](#)
 - the Knowledgebase and Documentation
 - the Customer Forum
 - Tech Alerts Maintenance
 - download software updates and patches
 - submit and track support cases
 - Five (5) incidents¹⁰ per Maintenance year for telephone and online access to technical support engineers during normal business hours for the region where Licensee is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

- Address Licensee open cases in a timely, professional and courteous manner
 - Assign a trouble case number used to track status and as a reference for Licensee inquiries
 - Communicate the status of open cases
 - Log the support activity and provide status updates
2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:
 - 24/7 support for Severity Level 1 & 2 issues
 - No limit on the number of incidents per Maintenance year for telephone and online access to technical support engineers
 - Priority access to technical support engineers
 - Priority support
 - Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on [Support](#) at: [Global Technical Support Programs](#)

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:
 - An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Licensee's technical issues
 - Premium Priority access to technical support engineers
 - Premium Priority support
4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Licensee to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Licensee's environment, the TAM will work with Licensee to:
 - Provide strategic support planning around Licensee's use of the Forcepoint Products
 - Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Licensee receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance ○ Available for an annual on-site visit
 - Collaborative strategic support planning

¹⁰ An "incident" is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year maintenance holders may aggregate and use the allotted incidents at any time during the then-current Maintenance Term. Incidents do not rollover to a renewal Maintenance Term. Assisted support for SaaS support will not count as an incident.

These benefits are described in more detail at: [Global Technical Support Programs](#)

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Licensee in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Licensee to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Licensee will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Licensee on a global level. Upon gaining an understanding of Licensee's environment, the GAM and regional TAMs will work with Licensee to:

- Provide strategic support planning around Licensee's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Licensee receives access to:

- Technical Account Manager:
 - o Expedited case handling and escalation path o Account related inquiries and assistance
 - Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

6. **Forcepoint Mission Critical Support Elite:** Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support's Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Licensee for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: [Global Technical Support Programs](#)

7. **Forcepoint Hardware Support:** Hardware support for Forcepoint appliances is available to licensees with current Maintenance for Forcepoint software applications running on the hardware. Support for hardware is available only during the Maintenance Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- "Retain your hard drive" option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Licensee's business location on record (see Section 10, Licensee Responsibilities)

These benefits are described in more detail at: www.websense.com

For non-Forcepoint branded hardware, Licensee must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times:** Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Licensee by a member of the Forcepoint Technical Support team or by the Licensee online at [Support](#).

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:

For all Forcepoint Products other than Forcepoint SaaS Products:

Severity Level	Initial Response		
	Standard	Premium	Mission Critical

	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite
Severity One (highest severity) Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes
Severity Two Business is disrupted but functioning. - a Forcepoint product's functionality is severely impacted - Mission critical applications or the majority of users are impacted.	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour
Severity Three Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours
Severity Four (lowest severity) A request for information. - Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day

Hardware On-Site Parts Replacement Response Times:

Hardware Appliance	Initial Response (after phone-based troubleshooting is completed)		
	Standard Support	Premium & Premium Priority Support	Mission Critical Support (including Global & Elite)

V10000 M5000 M7500 M10000	Not Available	Standard 3-Year, 4-Hour Onsite Parts Replacement ¹¹	Standard 3-Year, 4-Hour Onsite Parts Replacement ²
		Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3}	Standard 3-Year, Next Business Day Onsite Parts Replacement ²	Standard 3-Year, Next Business Day Onsite Parts Replacement ²
	Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
X10G	Not Available	Standard 3-Year, Next Business Day Onsite Parts Replacement ²	Standard 3-Year, 4-Hour Onsite Parts Replacement ²
		Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)

For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

Severity Level	Initial Response			Resolution Target
	Standard	Premium	Mission Critical	

¹¹ Subject to service availability within the service location. For additional information on service availability and locations visit: [Support](#) ³

Standard Support for V5000 is available only with maintenance purchased to Forcepoint Web Security.

	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite	
One - Service unavailable or, if applicable, Virus infection occurring	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes	As soon as possible but no later than within one business day of the call
Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour	As soon as practicable but within two business days or as otherwise agreed between Forcepoint and the customer
Three - Service is available, but technical questions or configuration issues	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours	As soon as practicable or as otherwise agreed between Forcepoint and the customer
Four – Information Issues, reporting questions, password resets	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day	At the time of response or as soon as practicable thereafter or as otherwise agreed between Forcepoint and the customer

9. **Service Level Guidelines: Response Time and Request Resolution¹²:**

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
- o Business hours are Monday through Friday, during the hours set forth in the region where Licensee resides as set forth at: [Contact Support](#) ("Business Hours") o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Licensees.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Licensee on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: [Target Response Times](#)

10. **Licensee Responsibilities:** In order to efficiently resolve problems, it is important that there be clear and effective communications between Licensee and Forcepoint. The first step of the process requires an accurate reporting of the problem by Licensee. Licensee will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Licensee name
- Maintenance Key information
- Support PIN of the day for Licensee's Cloud security account
- Technical contact information including: name, telephone number and email address
- Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
- Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Licensee should retain and use this case number in order to facilitate future communications regarding the matter.

¹² Service levels are applicable for the software configurations described at [Certified Product Matrix](#). Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.

In order to receive on-site parts replacement for a hardware Severity One problem, Licensee must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.¹³ Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

- Licensee must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration¹⁴
- Updates to a physical location must be completed prior to dispatching of authorized technicians
- Licensee or Licensee's authorized representative must be available when the service technician arrives, or the service technician will not be able to service the hardware¹⁵
- Missed service calls due to Licensee's unavailability may result in additional charges for the follow-up service call

be provided where:

- Hardware is repurposed or modified from its original configuration
- Hardware has missing or altered serial numbers or Service Tags
- Hardware has been serviced by someone other than a Forcepoint-authorized service provider
- Premium or Mission Critical Support maintenance has expired

11. **Technical Support Channels:** There are two ways for Licensees to engage support:

- Open a case online at: [Support](#)
- Open a case via telephone: [Contact Support](#)⁸

12. **Support Escalation Channels:** If after following the procedures for creation of a technical support case Licensee desires to escalate a support issue, the following escalation path to a Technical Support Manager in Licensee's region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

Technical Support Americas		1-858-458-2940
Technical Support EMEA		+44-203 02 444 01
Technical Support APAC	Australia/New Zealand:	+61 2 9414 0033
	India:	+1-858-332-0061
	China, Japan, SE Asia:	+86 (10) 5884-4200

Escalation contacts are available 24 hours a day, 7 days a week to service Licensee's Severity 1 business needs.

¹³ A service technician will only be dispatched after Forcepoint and Licensee have concluded phone-based troubleshooting and determined that a Severity One problem exists.

¹⁴ Registrations may take up to 10 business days to complete.

¹⁵ In the event that Licensee is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. ⁸ Toll-free numbers are provided for Licensees of Premium and Mission Critical Support in some geographies.

Section - EXHIBIT B

Security Service Level Agreement

1. Terms and Conditions

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

- 1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at [Subscription Agreement](#). The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at [Forcepoint SaaS Security Service Level Agreement](#).
- 1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A "Service Credit" entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.
- 1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Security service, where the Subscriber has been notified of the maintenance no less than five (5) days in advance.
- The Subscriber's applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Agreement.
- The Subscriber has used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint's reasonable control as set out in the Forcepoint Subscription Agreement.

1.5 The remedies set forth in these SLAs are the Subscriber's sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement.

2. SLAs for SaaS Email Security

2.1 Message Tracking.

• For 95% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email: Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).

- If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 Service Availability

- The SaaS Email Security service will be available 99.999% of the time.
- SaaS Email Security "Service Unavailability" means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint's published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 Service Management

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.
- If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 Spam Detection Rates

- Spam will be detected at a rate of 99% or above during each calendar month for Subscriber's use of the antispam service.
- The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.
- In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month's Service Credit.

2.5 Virus Detection

- For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This excludes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded.
- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Email Security service, at least thirty (30) minutes before the time the

email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 2.5 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.

3. SLAs for SaaS Web Security

3.1 Service Availability

- The SaaS Web Security service will be available 99.999% of the time.

- SaaS Web Security "Service Unavailability" means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint's published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.

- In the event of Service Unavailability for 0.001% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.

3.2 Virus Detection

- Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.

- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.

- In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.

- The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.

4. SLAs for Email Archiving

4.1 Service Availability

- The SaaS email archiving service will be available 99.99% of the time over a calendar month.

- SaaS email archiving "Service Unavailability" means the inability of the email archiving server to receive and transmit Subscriber's requests to store and retrieve archived email in conformance with Forcepoint's published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

- In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each calendar month where Service Unavailability exceeds 0.

FORCEPOINT NETWORK SECURITY PRODUCTS LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Database" means proprietary database(s) of IPS rules, URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or "Node" means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is considered to be a Device or Node.

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"GSA Customer Purchase Order" ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.

"Hardware" or "Unit" means a single instance of computer hardware purchased from Forcepoint as described in the Order. **"License"** means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database) for the term set forth in the Order, (ii) in combination with the Hardware (if provided in the Order), and (iii) in accordance with this Agreement and the Order.

"License Fees" means the agreed upon license fees for the Software (including the Database) included in an Order based on the GSA Schedule Price List.

"Licensee" means the ordering entity authorized to place an Order against the GSA Schedule Contract GS-35F-0511T on which the Products are included.

"Maintenance" means a limited, non-exclusive, personal, non-sublicensable, nontransferable right to receive during the Maintenance Term: (a) the technical support described in Section 5 (Technical Support), and (b) Software Upgrades, if any.

"Maintenance Term" means the agreed upon time period for the provision of Maintenance in an Order. **"Permitted Capacity"** means the number of Devices, Units, Nodes, or other license metrics as set forth in the Order.

"Products" means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Hardware, and Forcepoint packaged service offerings.

"Software" means Forcepoint's proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance, but excludes new products for which Forcepoint generally charges a separate fee.

"Subscription" means a limited, non-exclusive, personal, non-sublicensable, nontransferable right during the Subscription Term to: (a) receive and use the Database Updates, and (b) use the Products, in accordance with this Agreement and the Order. **"Subscription Fees"** means the agreed upon fees in an Order.

"Subscription Term" means the agreed upon time period in an Order.

"Virus" or "Malware" means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

2. Software License. Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License and if applicable a Subscription to use the Software and Software Upgrades provided pursuant to Maintenance identified in the Order solely for Licensee's internal business purposes up to the Permitted Capacity. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Upon renewal, Maintenance must be purchased for each Product purchased and running in Subscriber's environment. Licensee shall not and shall not permit anyone else to copy the Products, other than copies made solely for data backup and backup recovery testing purposes. Except as otherwise set forth in this Agreement, any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Licensee understands that its right to use the Products is limited by the Permitted Capacity, and Licensee's Use combined use may in no event exceed the authorized Permitted Capacity. If Licensee's use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Technical Support.

3.1 The support period is defined in the Order, and begins (i) on the date of the Order if a new purchase, or (ii) on the renewal date of the expiration of a previous support period. Product technical support includes standard technical support, Error corrections or workarounds so that the Software operates in substantial conformance with the Documentation provided under Forcepoint's Technical Support Policies which are provided for informational purposes as Exhibit A and can be found <https://www.forcepoint.com/technical-support-terms-service-and->

description. Standard technical support includes online website and portal access, and telephone support during business hours. Maintenance will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Support Term. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available for additional cost and are also subject to the terms of this Agreement. In the event Product support expires prior to renewing support Licensee must also purchase technical support to cover the lapsed support period between the date technical support expires and the date it is renewed. In the event technical support has lapsed for one year or more, Forcepoint may charge a reinstatement fee upon renewal in addition to Licensee's purchase of technical support for the lapsed period equal to the amount the Licensee would have paid if technical support had not lapsed.

3.2 Forcepoint's obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

3.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days prior written notice should Licensee not stay current with a supported release in accordance with this Section.

3.4 For the support period set forth in an Order, the Hardware support covers defects in materials and workmanship in the Hardware. The Hardware support does not cover: (a) software, including the operating system and software added to the Hardware, or the reloading of software; (b) non-Forcepoint branded products and accessories; (c) problems to the extent they result from (i) external causes such as accident, abuse, misuse, or problems with electrical power, (ii) servicing not authorized by Forcepoint, (iii) usage that is not in accordance with Hardware instructions, (iv) failure to follow the Hardware instructions or failure to perform preventive maintenance, (v) problems caused by using accessories, parts, or components not supplied or directed by Forcepoint; (d) normal wear and tear; and (e) Hardware with missing or altered service tags or serial numbers.

4. Intellectual Property Rights.

4.1 The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Licensee agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement. Licensee may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. No ownership of the Products passes to Licensee. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent. The Products may include programs or code that are licensed under an Open Source Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

4.2 The Hardware is sold by Forcepoint subject to the condition that the sale does not convey any license under any patent claim covering complete equipment, or any assembly, circuit combination, method or process in which any such Hardware are used as components. However, upon sale, title for the Hardware equipment shall pass to Licensee. Forcepoint, its licensors or suppliers retain all proprietary rights in and to any Hardware sold. Forcepoint and its suppliers reserve all its rights under such patent claims. Any software supplied with the Hardware is proprietary to Forcepoint or its licensors, and use of the software is subject to the terms of this Agreement.

5. Protection and Restrictions.

5.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement. Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party's personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information may be released, despite being characterized as

“confidential” by the vendor. 5.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for its internal business purposes. Licensee will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee’s personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a ‘service bureau’ basis; (vii) disclose or publish, without Forcepoint’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its personnel to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for its personnel’s compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

6. Reserved.

7. Limited Warranty; Remedies; Disclaimer.

7.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and this Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use (“Warranty Period”). Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee’s requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

7.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint shall, within thirty (30) days of its receipt of Licensee’s written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty related to the Products.

7.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

7.4 THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF, AND FORCEPOINT EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; or (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. Indemnification. In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at

its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. **SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.**

10. Term and Termination.

10.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order.. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products ends.

10.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Licensee must execute an Order for a new License. Licensee's continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Licensee is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.

10.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1 Definitions, 4 Intellectual Property Rights, 5 Protections and Restrictions, 7 Limited Warranty; Remedies; Disclaimer, 8 Limitation of Liability, 9 Indemnification, 10 Term and Termination, 12 Rights of Government Licensees, 13 Export, 14 Compliance, 15 General shall survive the termination of this Agreement.

11. Compliance with Laws. Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Licensee must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.

12. Rights of Government Licensees. The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is "commercial computer software" and applicable Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

13. Export. The Products are subject to export controls of the United States ("Export Controls"). Export or diversion contrary to U.S. and E.U. law is prohibited. U.S. and E.U. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries ("Prohibited Country" or "Prohibited Countries"). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the "Lists"). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles ("Prohibited Uses"). Licensee represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.

14. Compliance. Subject to Government security requirements, Forcepoint has the right to monitor the Licensee's systems to confirm its authorized use of the Products. Upon Forcepoint's request Licensee will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.

15. General. For the purposes of customer service, technical support, and as a means of facilitating interactions with its endusers, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email. Licensee may choose to "opt-out" of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Licensee acknowledges and agrees that by sending such email and "opting out" it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Licensee's and its personnel's use of the Products for its own purposes outside of the Agreement. Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 "Assignment of Claims" (May 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements." Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. In the absence of specific shipping instructions, Forcepoint will ship Hardware by the method it deems most advantageous using standard commercial packaging. Forcepoint is responsible for obtaining insurance against damage to the Hardware during shipment. At the

time Hardware is picked up by the common carrier from a Forcepoint location it is delivered, and title and risk of loss passes to Licensee. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers.. This Agreement, the underlying GSA Schedule Contract GS-35F0511T, the Schedule Price List, and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.

Exhibit A

FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Subscribers' use of Forcepoint Products. Subscribers are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support is included with a Subscription upon payment of the associated Subscription Fees. All Premium Support and Mission Critical Support offerings are additional charge support options, and are only provided after Subscriber has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Forcepoint Standard Support is included with the Subscription. Through the combination of available resources, Subscriber can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Subscribers receive access to:

- 24x7x365 online support located at: [Support](#)
- the Knowledgebase and Documentation
- the Customer Forum
- Tech Alerts Subscription
- download software updates and patches □ submit and track support cases
- Five (5) incidents¹⁶ per Subscription year for telephone and online access to technical support engineers during normal business hours for the region where Subscriber is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

- Address Subscriber open cases in a timely, professional and courteous manner
- Assign a trouble case number used to track status and as a reference for Subscriber inquiries
- Communicate the status of open cases
- Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:

- 24/7 support for Severity Level 1 & 2 issues
- No limit on the number of incidents per Subscription year for telephone and online access to technical support engineers
- Priority access to technical support engineers
- Priority support
- Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on [Support](#) at: [Global Technical Support Programs](#)

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:

- An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Subscriber's technical issues
- Premium Priority access to technical support engineers
- Premium Priority support

4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Subscriber to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Subscriber's environment, the TAM will work with Subscriber to:

- Provide strategic support planning around Subscriber's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Subscriber receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance
 - Available for an annual on-site visit

¹⁶ An "incident" is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year subscription holders may aggregate and use the allotted incidents at any time during the then-current Subscription Term. Incidents do not rollover to a renewal Subscription Term. Assisted support for SaaS support will not count as an incident.

- Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Subscriber in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Subscriber to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Subscriber will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Subscriber on a global level. Upon gaining an understanding of Subscriber's environment, the GAM and regional TAMs will work with Subscriber to:

- Provide strategic support planning around Subscriber's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Subscriber receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance
- Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

6. **Forcepoint Mission Critical Support Elite:** Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support's Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Subscriber for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- ◻ Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: [Global Technical Support Programs](#)

7. **Forcepoint Hardware Support:** Hardware support for Forcepoint appliances is available to subscribers with a current Subscription for Forcepoint software applications running on the hardware. Support for hardware is available only during the Subscription Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- "Retain your hard drive" option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Subscriber's business location on record (see Section 10, Subscriber Responsibilities)

These benefits are described in more detail at: www.forcepoint.com

For non-Forcepoint branded hardware, Subscriber must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times:** Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Subscriber by a member of the Forcepoint Technical Support team or by the Subscriber online at [Support](#).

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:

For all Forcepoint Products other than Forcepoint SaaS Products:

Severity Level	Initial Response

	Standard	Premium		Mission Critical		
	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite
Severity One (highest severity) Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes
Severity Two Business is disrupted but functioning. a Forcepoint product's functionality is severely impacted Mission critical applications or the majority of users are impacted.	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour
Severity Three Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours
Severity Four (lowest severity) A request for information. Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day

Hardware On-Site Parts Replacement Response Times:

Hardware Appliance	Initial Response (after phone-based troubleshooting is completed)

	Standard Support	Premium & Premium Priority Support	Mission Critical Support (including Global & Elite)
V10000 M5000 M7500 M10000	Not Available	Standard 3-Year, 4-Hour Onsite Parts Replacement ¹⁷ Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
X10G	Not Available	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)

For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

Severity Level	Initial Response	Resolution Target

¹⁷ Subject to service availability within the service location. For additional information on service availability and locations visit: [Support](#) ³

Standard Support for V5000 is available only with a subscription purchased to Forcepoint Web Security.

	Standard	Premium		Mission Critical			
	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite	
One - Service unavailable or, if applicable, Virus infection occurring	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes	As soon as possible but no later than within one business day of the call
Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour	As soon as practicable but within two business days or as otherwise agreed between Forcepoint and the customer
Three - Service is available, but technical questions or configuration issues	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours	As soon as practicable or as otherwise agreed between Forcepoint and the customer
Four – Information Issues, reporting questions, password resets	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day	At the time of response or as soon as practicable thereafter or as otherwise agreed between Forcepoint and the customer

9. **Service Level Guidelines: Response Time and Request Resolution¹⁸:**

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day.
 - o Business hours are Monday through Friday, during the hours set forth in the region where Subscriber resides as set forth at: [Contact Support](#) ("Business Hours")
 - o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Subscribers.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Subscriber on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: [Target Response Times](#)

10. **Subscriber Responsibilities:** In order to efficiently resolve problems, it is important that there be clear and effective communications between Subscriber and Forcepoint. The first step of the process requires an accurate reporting of the problem by Subscriber. Subscriber will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Subscriber name
- Subscription Key information
- Support PIN of the day for Subscriber's Cloud security account

¹⁸ Service levels are applicable for the software configurations described at [Certified Product Matrix](#). Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.

- Technical contact information including: name, telephone number and email address
- Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
- Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Subscriber should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Subscriber must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.¹⁹ Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

- Subscriber must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration²⁰
- Updates to a physical location must be completed prior to dispatching of authorized technicians
- Subscriber or Subscriber's authorized representative must be available when the service technical arrives, or the service technician will not be able to service the hardware²¹
- Missed service calls due to Subscriber's unavailability may result in additional charges for the follow-up service call

be provided where:

- Hardware is repurposed or modified from its original configuration
- Hardware has missing or altered serial numbers or Service Tags
- Hardware has been serviced by someone other than a Forcepoint-authorized service provider
- Premium or Mission Critical Support subscription has expired

11. **Technical Support Channels:** There are two ways for Subscribers to engage support:

- Open a case online at: [Support](#)
- Open a case via telephone: [Contact Support](#)⁸

12. **Support Escalation Channels:** If after following the procedures for creation of a technical support case Subscriber desires to escalate a support issue, the following escalation path to a Technical Support Manager in Subscriber's region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

Technical Support Americas		1-858-458-2940
Technical Support EMEA		+44-203 02 444 01
Technical Support APAC	Australia/New Zealand:	+61 2 9414 0033
	India:	+1-858-332-0061
	China, Japan, SE Asia:	+86 (10) 5884-4200

Escalation contacts are available 24 hours a day, 7 days a week to service Subscriber's Severity 1 business needs.

¹⁹ A service technician will only be dispatched after Forcepoint and Subscriber have concluded phone-based troubleshooting and determined that a Severity One problem exists.

²⁰ Registrations may take up to 10 business days to complete.

²¹ In the event that Subscriber is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. ⁸

Toll-free numbers are provided for Subscribers of Premium and Mission Critical Support in some geographies.

FORCEPOINT SUBSCRIPTION AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT THE GSA CUSTOMER ("SUBSCRIBER") AGREES TO THE TERMS AND CONDITIONS IN THIS SUBSCRIPTION AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN SUBSCRIBER AND FORCEPOINT. IF YOU ARE PURCHASING LICENSES FROM THE GSA SCHEDULE, YOUR PURCHASE ORDER MUST REFERENCE GSA SCHEDULE # GS-35F-0511T. OTHERWISE, IF YOU ARE AN EMPLOYEE OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT, OR THE SOFTWARE IS OTHERWISE FOR USE BY A FEDERAL, STATE OR LOCAL GOVERNMENT, YOU MUST EITHER STATE IN YOUR PURCHASE ORDER THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN YOUR ORDER AND WILL SUPERSEDE ANY TERMS AND CONDITIONS CONTAINED IN YOUR PURCHASE ORDER OR ATTACH THESE TERMS TO AN EXECUTED CONTRACT.

1. Definitions.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or "Seat" means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber's email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Subscriber.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Subscriber and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simonscourt Road, Dublin 4, Ireland; or (iii)

Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"GSA Customer Purchase Order" ("Order") means a purchase commitment mutually agreed upon between Forcepoint or a Forcepoint authorized reseller(s) and the GSA Customer for ordering supplies or services pursuant to FAR part 8.4.

"Permitted Capacity" means the number of Devices, Seats, Users, or other license metrics as set forth in the Order. **"Products"** means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS, and Forcepoint packaged service offerings.

"SaaS" or "Software as a Service" means Forcepoint's software-as-a-service offerings, including SaaS Web and/or SaaS Email.

"Software" means Forcepoint's proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes new products for which Forcepoint generally charges a separate fee.

"Subscriber" means the ordering activity authorized to place an Order against the GSA Schedule Contract, GS-35F-0511T on which the Products are included.

"Subscription" means a non-exclusive, nontransferable right to use the Products in accordance with this Agreement and the Order.

"Subscription Fees" means the agreed upon fees in an Order based on the GSA Schedule Price List.

"Subscription Term" means the agreed upon time period in an Order.

"User" means (i) any person utilizing Subscriber's network with access to the Products directly or indirectly, who is an employee, temporary employee, agent, consultant and/or independent contractor (collectively referred to as "personnel," hereinafter), or guest of Subscriber (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber's email system or network.

For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User). **"Virus" or "Malware"** means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails Per Seat" or "Average Emails Per User" means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail" means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay" means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server's email network.

"Spam" means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth Per Seat" or "Average Bandwidth Per User" means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

"Web Content" means any data and requests for data processed by SaaS Web including, but not restricted to that accessed using the Internet protocols HTTP and FTP.

“SaaS Web” means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. **Product Subscription.** Subject to the provisions contained in this Agreement, and timely payment of the applicable fees, Forcepoint hereby grants Subscriber, for the Subscription Term, a Subscription, to use the Products identified in the Order solely for Subscriber's internal business purposes up to the Permitted Capacity set forth in the Order. Subject to compliance with the terms of this Agreement, Subscriber may relocate or transfer the on-premise Product for use on a different server within its location. Subscriber shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Subscriber by Forcepoint is subject to the terms of this Agreement. Subscriber understands that its right to use the Products is limited by the Permitted Capacity purchased, and Subscriber's use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Subscriber has committed to for the Subscription Term. If Subscriber's use exceeds the Permitted Capacity, Forcepoint will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.
3. **Provision of SaaS.**
 - 3.1 Forcepoint will use commercially reasonable efforts to provide SaaS for the Subscription Term. The then-current Service levels for SaaS are attached as Exhibit B for information purposes. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail.
 - 3.2 If Forcepoint determines that the security or proper function of SaaS would be compromised due to third-party, hacking, denial of service attacks or other activities originating from or directed at Subscriber's network, Forcepoint may immediately suspend SaaS until the problem is resolved. Forcepoint will promptly notify and work with Subscriber to resolve the issues.
 - 3.3 If SaaS is suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS enrollment. It is Subscriber's responsibility to make the server configuration changes necessary to reroute email for SaaS Email and reroute Web Content for SaaS Web.
 - 3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.
 - 3.5 Subscriber must not use SaaS Email as an Open Relay.
 - 3.6 Subscriber must not use the Products to distribute Spam or Malware.
 - 3.7 If in any one (1) calendar month the Average Emails Per Seat or Average Emails Per User is greater than ten thousand (10,000), Subscriber will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Subscriber for which SaaS Email scans inbound or outbound email. Subscriber's Average Emails Per Seat or Average Emails Per User must not be greater than thirty thousand (30,000) in any one (1) calendar month.
 - 3.8 Subscriber's Average Bandwidth Per Seat or Average Bandwidth Per User must not be greater than 0.02Mbps in any one (1) calendar month.
4. **Subscriber Obligations.**
 - 4.1 Subscriber will (a) comply with all applicable federal laws, statutes and regulations, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its personnel, and (c) not use the Products to transmit Spam, Malware, or excessive email as defined in section 3.7.
 - 4.2 Subscriber must (a) have the authority, rights, or permissions to use all domains registered to the Products, and (b) obtain any legally required consents from its personnel, and (c) not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Websense's express prior written approval.
 - 4.3 Forcepoint will not be liable for any claims, demands, suits, or proceedings (“Claims”) made or brought against Forcepoint by a third party alleging or related to Subscriber's (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) civil or criminal offenses; (iv) transmission or posting of obscene, indecent, or pornographic materials; (v) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vi) transmission of information through the Products.
5. **Technical Support.**
 - 5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under Forcepoint's Technical Support Policies which are provided for informational purposes as Exhibit A and can be found at <https://www.forcepoint.com/technicalsupportterms-service-and-description>. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be

provided to Subscriber Forcepoint may require Subscriber to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available pursuant to the execution of a new or modified Order and are also subject to the terms of this Agreement.

- 5.2 Forcepoint's obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Subscriber's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.
- 5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product.

6. **Intellectual Property Rights.** The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Subscriber agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Subscriber under this Agreement. Subscriber may not assign more than twenty (20) administrators to administer Forcepoint products. All rights not granted to Subscriber in this Agreement are reserved to Forcepoint. No ownership of the Products passes to Subscriber. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Subscriber may not remove any

proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent.

7. **Protection and Restrictions.**

- 7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties that is designated as confidential. When the end user is an instrumentality of the U.S. Government, neither this Agreement nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and Receiving Party's personnel on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information may be released, despite being characterized as "confidential" by the vendor. For the avoidance of doubt, Licensee agrees that Licensee's initial response to any such request to provide Forcepoint Products will be to assert the trade secret exceptions to any disclosure requirements.

- 7.2 Subscriber will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Subscriber may use the Products only for its internal business purposes. Subscriber will not itself, or through its personnel or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Subscriber's personnel who have a need for such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi)

use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without

Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the Products except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Subscriber may allow its personnel to use the Products solely for the benefit of Subscriber; provided, however, Subscriber remains responsible for its personnel's compliance with this Agreement. Any other use of the Products by any other entity is prohibited.

8. Reserved.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For the Subscription Term, Forcepoint warrants that the Products, as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Subscriber, will operate in substantial conformance with the Documentation under normal use. Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Subscriber's requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) that data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

9.2 Subscriber must promptly notify Forcepoint in writing of a breach of warranty claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint shall, within thirty (30) days of its receipt of Subscriber's written notice, (i) correct the Error or provide a workaround; (ii) provide Subscriber with a plan reasonably acceptable to Subscriber for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product Subscription and Subscriber will be entitled to a refund of the unused Subscription Fees paid for the affected Product applicable to the balance of the then-current Subscription Term. This paragraph sets forth Subscriber's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Subscriber's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) related breach of this Agreement.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT,, EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW, ALL OTHER

WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; NOR (IV) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE APPLICABLE PRODUCTS AND SERVICES OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS OR SERVICES THAT DIRECTLY CAUSED THE LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law.

11. Indemnification. In the event of a third-party claim, suit or proceeding against Subscriber asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Subscriber and indemnify Subscriber against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint's obligation under this Section is contingent upon Subscriber providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Subscriber to implement Software Upgrades and Database Updates. In the event the Products, in

Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Subscriber's continued use of the

Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Subscriber the unused Subscription Fees paid for the affected Product applicable to the balance of the then-current Subscription Term.

SUBJECT TO FAR 52.212-4(h), THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

12. Term and Termination.

- 12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying GSA Schedule Contract and/or any applicable Order. Upon termination or expiration of the Subscription Term, Subscriber's right to use the Products ends.
- 12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days and are subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions may only be used to evaluate and facilitate Subscriber's decision to purchase a subscription to Products, and (ii) evaluation subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period, Subscriber must execute an Order for a new Subscription. Subscriber's continued use of the Products after executing a new Order is subject to this Agreement. For purposes of clarification, Subscriber is not entitled to a refund of any pre-paid fees or waiver of any fees owed prior to termination of this Agreement or an Order.
- 12.3 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Subscriber must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, Definitions, 6, Intellectual Property Rights, 7, Protection and Restrictions, 8, Financial Terms, 9, Limited Warranty: Remedies; Disclaimer, 10, Limitation of Liability, 11, Indemnification, 12, Term and Termination, 14, Government Restricted Rights, 15, Export, 16, Compliance and 17, General survive the termination of this Agreement.
13. Compliance with Laws. Each party will comply with all applicable laws and regulations that may apply concerning the protection of personal data, and anti-bribery. Subscriber must obtain any required employee consents addressing the interception, reading, copying or filtering of emails and their attachments. Neither party will use any data obtained via the Products for any unlawful purpose.
14. Government Restricted Rights. The Products are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in FAR 52.227-14 "Rights in Data" (Dec. 2007) and DFARS 252.227-70155 "Technical Data-Commercial Items" or its successors. The U.S. Government acknowledges Forcepoint's proprietary rights in the products and services. Contractor or Manufacturer is Forcepoint.
15. Export. The Products are subject to export controls of the United States ("Export Controls"). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or re-export of the software or technology to specified countries or to a resident or national of those countries ("Prohibited Country" or "Prohibited Countries"). It also prohibits export or re-export of the software or technology to any person or entity on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the "Lists"). U.S. law also prohibits use of the software or technology with chemical, biological or nuclear weapons, or with missiles ("Prohibited Uses"). Subscriber represents and warrants that it will not use the software or technology for any Prohibited Uses; and that it will comply with Export Controls.
16. Compliance. Subject to Government security requirements, Forcepoint has the right to monitor the Subscriber's systems to confirm its authorized use of the Products. Upon Forcepoint's request, Subscriber will document and certify that its use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. Subscriber acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.
17. General. For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Subscriber messages of an informational or advertising nature via email. Subscriber may choose to "opt-out" of receiving these messages or information sharing by sending an email to optoutlegal@forcepoint.com requesting the opt-out. Subscriber acknowledges and agrees that by sending such email and "opting out" it will not receive emails containing messages concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Subscriber acknowledges that Forcepoint may use Subscriber's company name only in a general list of Forcepoint customers. subject to the restrictions contained in GSAR 552.203-71 regarding publicity. Forcepoint may use any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Subscriber or its personnel relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Subscriber's and its personnel's use of the Products for its own purposes outside of the Agreement. Subscriber may not transfer any of Subscriber's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Assignment by Forcepoint is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013).

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly

posted. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are deemed given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or its address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States. Pursuant to FAR 52.212-4(f), neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. This Agreement, the underlying GSA Schedule Contract GS-35F-0296R, the Schedule Price List and any applicable GSA Customer Purchase Order constitute the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not stated therein. This Agreement, however shall take precedence, to the maximum extent allowed by law, over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order with Forcepoint. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties. Subscriber agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of both parties.

Section - EXHIBIT A FORCEPOINT TECHNICAL SUPPORT

Forcepoint Technical Support combines people, process and technology in support of our Subscribers' use of Forcepoint Products. Subscribers are enrolled in one of six Forcepoint Technical Support programs: (1) Standard Support; (2) Premium Support; (3) Premium Priority Support; (4) Mission Critical Support; (5) Mission Critical Support Global; (6) Mission Critical Support Elite. Standard Support is included with a Subscription upon payment of the associated Subscription Fees. All Premium Support and Mission Critical Support offerings are additional charge support options, and are only provided after Subscriber has paid the associated fees for participation in one of these five support options.

1. **Forcepoint Standard Support:** Forcepoint Standard Support is included with the Subscription. Through the combination of available resources, Subscriber can submit new cases and manage case status, access the latest security features and download software, upgrades, updates and patches, as well as review technical documentation. With Standard Support, Subscribers receive access to:

- 24x7x365 online support located at: [Support](#)
- the Knowledgebase and Documentation
- the Customer Forum
- Tech Alerts Subscription
- download software updates and patches
- submit and track support cases
- Five (5) incidents²² per Subscription year for telephone and online access to technical support engineers during normal business hours for the region where Subscriber is located

The Forcepoint support team has received technical training in the Forcepoint Products and related supported applications. Forcepoint will:

- Address Subscriber open cases in a timely, professional and courteous manner
- Assign a trouble case number used to track status and as a reference for Subscriber inquiries
- Communicate the status of open cases
- Log the support activity and provide status updates

2. **Forcepoint Premium Support:** Forcepoint Premium Support includes all the benefits of Standard Support on a 24x7 basis, including weekends and holidays for Severity 1 & 2 issues. In addition to those benefits included in Standard Support, Premium Support includes:

- 24/7 support for Severity Level 1 & 2 issues
- No limit on the number of incidents per Subscription year for telephone and online access to technical support engineers
- Priority access to technical support engineers
- Priority support
- Severity three and four issues will be worked during regular business hours only

These benefits are described in more detail on [Support](#) at: [Global Technical Support Programs](#)

3. **Forcepoint Premium Priority Support:** Forcepoint Premium Priority Support includes all the benefits of Premium Support, and also includes:

²² An "incident" is any assisted support where a case is opened and a case number assigned by Forcepoint. Multi-year subscription holders may aggregate and use the allotted incidents at any time during the then-current Subscription Term. Incidents do not rollover to a renewal Subscription Term. Assisted support for SaaS support will not count as an incident.

- An assigned Escalation Manager who is responsible for ensuring consistent workflow of technical support cases and timely progression of Subscriber's technical issues
- Premium Priority access to technical support engineers
- Premium Priority support

4. **Forcepoint Mission Critical Support:** Forcepoint Mission Critical Support combines all the benefits of Premium Priority Support with a technical account manager (TAM) who is assigned to the account, and who proactively works with the Subscriber to support performance, reliability and availability of the Forcepoint Products. Upon gaining an understanding of Subscriber's environment, the TAM will work with Subscriber to:

- Provide strategic support planning around Subscriber's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support, Subscriber receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance
 - Available for an annual on-site visit
 - Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

5. **Forcepoint Mission Critical Support Global:** Forcepoint Mission Critical Support Global combines all the benefits of Premium Priority Support with regionally assigned Technical Account Managers (TAMs) who are assigned to the Subscriber in each of the three Forcepoint business regions (AMER, EMEA and APAC). The TAMs proactively work with the Subscriber to support performance, reliability and availability of the Forcepoint Products. In addition to regional TAM coverage the Subscriber will also be provided with a Global Account Manager (GAM) who oversees and organizes the actions and activities of the regional TAMs for the Subscriber on a global level. Upon gaining an understanding of Subscriber's environment, the GAM and regional TAMs will work with Subscriber to:

- Provide strategic support planning around Subscriber's use of the Forcepoint Products
- Perform architecture reviews, migration planning assistance, training recommendations and periodic account reviews

With Mission Critical Support Global, Subscriber receives access to:

- Technical Account Manager:
 - Expedited case handling and escalation path
 - Account related inquiries and assistance
 - Collaborative strategic support planning

These benefits are described in more detail at: [Global Technical Support Programs](#)

6. **Forcepoint Mission Critical Support Elite:** Forcepoint Mission Critical Support Elite combines all the benefits of Mission Critical Support's Technical Account Manager (TAM) with increased levels of technical engagement and assistance consisting of the TAM being made available to work with Subscriber for:

- On-site upgrade assistance (up to 1 per year, 2 days maximum)
- On-site issue resolution assistance (up to 1 per year, 2 days maximum)
- Quarterly health check review via remote sessions
- Custom training (up to 4 – Two (2) hour sessions per year) delivered remotely
- Advanced architectural planning (disaster recovery and high availability)

These benefits are described in more detail at: [Global Technical Support Programs](#)

7. **Forcepoint Hardware Support:** Hardware support for Forcepoint appliances is available to subscribers with a current Subscription for Forcepoint software applications running on the hardware. Support for hardware is available only during the Subscription Term and under a valid hardware support contract.

Hardware support includes:

- Parts replacement of defective hardware materials and workmanship including internal peripherals
- "Retain your hard drive" option in the event of hard drive failure and replacement
- Phone-based troubleshooting
- Severity One level on-site parts replacement provided by a Forcepoint authorized service technician at Subscriber's business location on record (see Section 10, Subscriber Responsibilities)

These benefits are described in more detail at: www.forcepoint.com

For non-Forcepoint branded hardware, Subscriber must contact the hardware manufacturer directly in order to obtain any available warranty assistance.

8. **Forcepoint Technical Support Targeted Response Times:** Forcepoint follows a tiered support process. Tiered support is a controlled escalation environment, employed to deliver multiple levels of support as deemed appropriate for the support request. Response times are dependent on the severity of the issue reported. A support case is generated for the Subscriber by a member of the Forcepoint Technical Support team or by the Subscriber online at [Support](#).

Technical Support requests which are not resolved during the first telephone contact are assigned a Severity Level based on the descriptions in the chart below:

For all Forcepoint Products other than Forcepoint SaaS Products:

Severity Level	Initial Response					
	Standard	Premium		Mission Critical I		
	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite
Severity One (highest severity) Business is severely impacted. - a Forcepoint product is not functioning and no viable workaround is available - Customer environment compromised or at risk for significant data corruption - Mission critical application is down or the majority of users are not able to conduct business	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes
Severity Two Business is disrupted but functioning. - a Forcepoint product's functionality is severely impacted - Mission critical applications or the majority of users are impacted.	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour
Severity Three Business is not affected but symptoms exist. - a Forcepoint product is functioning in a restricted fashion and a workaround exists - Mission critical applications are functional with some end users affected	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours

Severity Four (lowest severity) A request for information. - Request for product information or questions regarding how to use the product Minimal impact to customer business a request for product modification	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day

Hardware On-Site Parts Replacement Response Times:

Hardware Appliance	Initial Response (after phone-based troubleshooting is completed)		
	Standard Support	Premium & Premium Priority Support	Mission Critical Support (including Global & Elite)
V10000 M5000 M7500 M10000	Not Available	Standard 3-Year, 4-Hour Onsite Parts Replacement ²³ Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
X10G	Not Available	Standard 3-Year, Next Business Day Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)

²³ Subject to service availability within the service location. For additional information on service availability and locations visit: [Support](#) ³ Standard Support for V5000 is available only with a subscription purchased to Forcepoint Web Security.

For Forcepoint SaaS Products only:

(24/7 Support will be available for Severity Level-One and Level-Two issues.)

Severity Level	Initial Response						Resolution Target
	Standard	Premium		Mission Critical			
	Standard Support	Premium Support	Premium Priority Support	Mission Critical Support	Mission Critical Support Global	Mission Critical Support Elite	
One - Service unavailable or, if applicable, Virus infection occurring	Up to 1 Business Hour	Up to 45 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 30 Minutes	Up to 15 Minutes	As soon as possible but no later than within one business day of the call
Two – Partial loss of Service but, as applicable, Web Content and/or email are still being processed	Up to 4 Business Hours	Up to 4 Hours	Up to 3 Hours	Up to 2 Hours	Up to 2 Hours	Up to 1 Hour	As soon as practicable but within two business days or as otherwise agreed between Forcepoint and the customer
Three - Service is available, but technical questions or configuration issues	Up to 8 Business Hours	Up to 8 Business Hours	Up to 6 Business Hours	Up to 4 Business Hours	Up to 4 Business Hours	Up to 2 Business Hours	As soon as practicable or as otherwise agreed between Forcepoint and the customer
Four – Information Issues, reporting questions, password resets	Up to 2 Business Days	Up to 2 Business Days	Up to 2 Business Days	Up to 1 Business Day	Up to 1 Business Day	Up to 1 Business Day	At the time of response or as soon as practicable thereafter or as otherwise agreed between Forcepoint and the customer

9. Service Level Guidelines: Response Time and Request Resolution²⁴:

Service Level Compliance: Forcepoint strives to provide compliance of 80% (90% for Mission Critical Support) for the service levels set forth in the following response times:

- Service response levels: o Target response time for inbound telephone calls made during business hours is based on the Severity of the issue (Please see chart); resolution time for 30% of the issues is generally within one business day. o Business hours

²⁴ Service levels are applicable for the software configurations described at [Certified Product Matrix](#). Action requests involving non-included configurations may require more time to resolve, Forcepoint will make commercially reasonable efforts to resolve technical support calls in the aforementioned service level time frame.

are Monday through Friday, during the hours set forth in the region where Subscriber resides as set forth at: [Contact Support](#) ("Business Hours")

- o For calls to the 24x7 Support Line that occur after hours, the target response time for inbound telephone calls is within one hour for entitled Subscribers.

Escalation response levels: If it is determined that the Forcepoint Technical Support team cannot resolve the support case, the issue will be escalated to the Forcepoint Engineering team. The technical support engineer updates Subscriber on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

Support for hardware: Response times for hardware parts replacement applies after phone-based troubleshooting has concluded and will vary by country. Service availability and response times are available at: [Target Response Times](#)

10. **Subscriber Responsibilities:** In order to efficiently resolve problems, it is important that there be clear and effective communications between Subscriber and Forcepoint. The first step of the process requires an accurate reporting of the problem by Subscriber. Subscriber will need to provide Forcepoint Technical Support with at least the following information to initiate the process outlined in this document:

- Subscriber name
- Subscription Key information
- Support PIN of the day for Subscriber's Cloud security account
- Technical contact information including: name, telephone number and email address
- Preliminary assessment of the scope and severity of the problem, including the number of affected users/Seats
- Additional details and files as requested by Forcepoint needed to resolve the issue

A case number will be assigned and provided to you. Subscriber should retain and use this case number in order to facilitate future communications regarding the matter.

In order to receive on-site parts replacement for a hardware Severity One problem, Subscriber must keep a current record with Forcepoint of the business location on record for the physical location of the hardware.²⁵ Failure to keep current the business location on record will result in service interruption until Forcepoint and its OEM receive and process the information for the updated location.

- Subscriber must notify Forcepoint of hardware transferred to alternate business locations, 10 days prior to the transfer, within or outside the country of purchase to ensure response time coverage and country registration²⁶
- Updates to a physical location must be completed prior to dispatching of authorized technicians
- Subscriber or Subscriber's authorized representative must be available when the service technical arrives, or the service technician will not be able to service the hardware²⁷
- Missed service calls due to Subscriber's unavailability may result in additional charges for the follow-up service call

be provided where:

- Hardware is repurposed or modified from its original configuration
- Hardware has missing or altered serial numbers or Service Tags
- Hardware has been serviced by someone other than a Forcepoint-authorized service provider • Premium or Mission Critical Support subscription has expired

11. **Technical Support Channels:** There are two ways for Subscribers to engage support:

- Open a case online at: [Support](#)
- Open a case via telephone: [Contact Support](#)⁸

12. **Support Escalation Channels:** If after following the procedures for creation of a technical support case Subscriber desires to escalate a support issue, the following escalation path to a Technical Support Manager in Subscriber's region is available using the numbers listed below:

Note: Please ask for a support delivery manager when calling during supported business hours for immediate attention to your concerns.

Technical Support Americas	1-858-458-2940
Technical Support EMEA	+44-203 02 444 01

²⁵ A service technician will only be dispatched after Forcepoint and Subscriber have concluded phone-based troubleshooting and determined that a Severity One problem exists.

²⁶ Registrations may take up to 10 business days to complete.

²⁷ In the event that Subscriber is not available, the technician will leave a card as indication that the technician was there and the visit will be rescheduled. ⁸ Toll-free numbers are provided for Subscribers of Premium and Mission Critical Support in some geographies.

EC America, Inc.

a subsidiary of  immixGroup

Technical Support APAC	Australia/New Zealand:	+61 2 9414 0033
	India:	+1-858-332-0061
	China, Japan, SE Asia:	+86 (10) 5884-4200

Escalation contacts are available 24 hours a day, 7 days a week to service Subscriber's Severity 1 business needs.

Section - EXHIBIT B

Security Service Level Agreement

1. Terms and Conditions

Forcepoint™ is a premier provider of SaaS security services. Forcepoint provides these SLAs in order to demonstrate its ongoing commitment to provide top-quality SaaS security service offerings for world class organizations and businesses.

1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at [Subscription Agreement](#). The defined terms therein shall have the same meaning when used in this SLA. The current version of these SLAs can be found at [Forcepoint SaaS Security Service Level Agreement](#).

1.2 In order to receive a Service Credit under any of these SLAs, the Subscriber must make a credit request in writing within thirty (30) days of the occurrence of the breach in service levels (or earlier if specifically set forth below). The Subscriber must also promptly provide Forcepoint with evidence as reasonably requested by Forcepoint of the SLA violation subject to the Service Credit request. A "Service Credit" entitles the Subscriber to the free use of the affected SaaS security service for the time period set forth in the applicable SLA.

1.3 Credits for any Subscriber problems with Forcepoint SaaS Security services will be provided under a single SLA for a single claim, with the SLA that the claim is based upon determined by the Subscriber. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

- The SaaS Security service is unavailable for an hour or less, and the Subscriber fails to report the unavailability in writing to Forcepoint within five (5) days thereafter.
- The SaaS Security service is incorrectly configured by the Subscriber.
- The Subscriber provides incorrect configuration information to Forcepoint.
- Forcepoint is performing scheduled or routine maintenance of the SaaS Security service, where the Subscriber has been notified of the maintenance no less than five (5) days in advance.
- The Subscriber's applications or equipment or Internet connection has failed.
- For SaaS Email Security, where an account is not configured to use two or more co-location sites (clusters).
- The Subscriber has acted as an open relay or open proxy, or has been using the service to send spam or viruses, or otherwise is using the SaaS Security service in violation of the Forcepoint Subscription Agreement.
- The Subscriber has used the SaaS Security service for thirty (30) days or less.
- The Subscriber is a trial or evaluation customer.
- The failure of the SLA is based on reasons beyond Forcepoint's reasonable control as set out in the Forcepoint Subscription Agreement.

1.5 The remedies set forth in these SLAs are the Subscriber's sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Forcepoint Subscription Agreement.

2. SLAs for SaaS Email Security

2.1 Message Tracking.

- For 95% of all emails processed, the following will be available for review in the Message Center within five (5) minutes of receipt of an email: Detailed SMTP logs and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
- If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Subscriber is using the portal and following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email log or quarantined email that did not meet this service level, subject to a maximum credit of five (5) days in any one month.

2.2 Service Availability

- The SaaS Email Security service will be available 99.999% of the time.
- SaaS Email Security "Service Unavailability" means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint's published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one month.

2.3 Service Management

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than sixty (60) seconds.
- If in any one calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes sixty (60) seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one day's Service Credit for each email that takes sixty (60) seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of five (5) days in any one month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

2.4 Spam Detection Rates

- Spam will be detected at a rate of 99% or above during each calendar month for Subscriber's use of the antispam service.
- The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.
- In the event the spam detection rate drops below 99% for a period of more than five (5) days in any one calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one (1) month's Service Credit.

2.5 Virus Detection

- For Subscribers subscribing to the anti-virus service, Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside email that has passed through the SaaS Email Security service. This excludes links (URLs) inside email messages that take the Subscriber to a website where Viruses can be downloaded.
- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Email Security service, at least thirty (30) minutes before the time the email was processed by the SaaS Email Security service. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.

- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected email. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 2.5 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 2.5 being inapplicable.
- In the event that one or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence acceptable to Forcepoint that the SaaS Email Security service failed to detect the Known Virus within five (5) working days of the Virus infection.
- The Virus Detection SLA for SaaS Email Security will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Subscriber, or by the Subscriber through the email filtering portal, or (c) there is deliberate self-infection by the Subscriber or its authorized user.
- **3. SLAs for SaaS Web Security**
- 3.1 *Service Availability*
 - The SaaS Web Security service will be available 99.999% of the time.
 - SaaS Web Security "Service Unavailability" means the SaaS Web Security service being unable to receive, process and forward Web Content in substantial conformance with Forcepoint's published documentation as may be updated by Forcepoint from time to time, on behalf of the Subscriber and measured during any given calendar month.
 - In the event of Service Unavailability for 0.001% or more of any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will provide the Subscriber a credit of one day's Service Credit for each two (2) hour period of Service Unavailability, subject to a maximum credit of five (5) days in any one calendar month.
- 3.2 *Virus Detection*
 - Forcepoint will protect the Subscriber from infection by 100% of all Known Viruses contained inside Web Content that has passed through the SaaS web protection service module of the SaaS Web Security service.
 - A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by one of the anti-virus services whose technology is used within Forcepoint's SaaS Web Security service, at least thirty (30) minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware and spam.
 - In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Subscriber, providing information to enable the Subscriber to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Subscriber's systems, then the remedy defined in this Section 3.2 shall not apply. Subscriber's failure to promptly act on such information will also result in the remedy defined in this Section 3.2 being inapplicable.
 - In the event that one or more Known Viruses in any calendar month passes through the SaaS Web Security service undetected and infects the Subscriber's systems, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber with one month's Service Credit, subject to the Subscriber providing evidence that the SaaS Web Security service failed to detect the Known Virus within five (5) working days of the Virus infection.
 - The Virus Detection SLA for web security will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Subscriber configured the service to not filter the web content, or (d) there is deliberate self-infection by the Subscriber or its authorized user.
- **4. SLAs for Email Archiving**
- 4.1 *Service Availability*
 - The SaaS email archiving service will be available 99.99% of the time over a calendar month.
 - SaaS email archiving "Service Unavailability" means the inability of the email archiving server to receive and transmit Subscriber's requests to store and retrieve archived email in conformance with Forcepoint's published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.
 - In the event of Service Unavailability for more than 0.01% for any calendar month, following a request submitted by the Subscriber in accordance with Section 1 above, Forcepoint will credit the Subscriber account with one day's Service Credit for each calendar month where Service Unavailability exceeds 0.

Fortinet, Inc.
1090 Kifer Road
Sunnyvale, CA 94086

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

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

- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

FORTINET, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. License Grant.

This is a license, not a sales agreement, between Ordering Activity and Contractor. The term "Software", as used throughout this Attachment A, includes all Fortinet and third party firmware and software provided to Ordering Activity with, or incorporated into, Fortinet appliances and any stand-alone software provided to Ordering Activity by Contractor, with the exception of any open source software contained in Fortinet's Products which is discussed in detail in section 15 below, and the term "Software" includes any accompanying documentation, any updates and enhancements of the software or firmware provided to Ordering Activity by Contractor, at its option. Contractor grants to Ordering Activity a non-transferable (except as provided in section 5 ("Transfer") and section 13 ("Open Source Software") below), non-exclusive, revocable (in the event of your failure to comply with these terms or in the event Contractor is not properly paid for the applicable Product) license to use the Software solely for Ordering Activity's internal business purposes (provided, if a substantial portion of Ordering Activity's business is to provide managed service provider services to Ordering Activity's end-customers, Ordering Activity may use the Software embedded in FortiGate and supporting hardware appliances to provide those services, subject to the other restrictions in this Attachment A), in accordance with the terms set forth in this Attachment A and subject to any further restrictions in Fortinet documentation, and solely on the Fortinet appliance, or, in the case of blades, CPUs or databases, on the single blade, CPU or database on which Fortinet installed the Software or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed, or, in the case of blades, CPUs or databases, on a single blade, CPU or database. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on blades, CPUs or databases are licensed on a per single blade, solely for one blade and not for multiple blades that may be installed in a chassis, per single CPU or per single database basis, as applicable. The Software is "in use" on any Fortinet appliances when it is loaded into temporary memory (i.e. RAM). Ordering Activity agrees that, except for the limited, specific license rights granted in this section 1, Ordering Activity receive no license rights to the Software.

2. Limitation on Use.

Ordering Activity may not attempt to, and, if Ordering Activity is a corporation, Ordering Activity is responsible to prevent Ordering Activity's employees and contractors from attempting to, (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software; (b) rent or lease any rights in the Software in any form to any third party or make the Software available or accessible to third parties in any other manner; (c) except as provided in section 5, transfer assign or sublicense right to any other person or entity, or (d) remove any proprietary notice, labels, or marks on the Software, Products, and containers.

3. Proprietary Rights.

All rights, title, interest, and all copyrights to the Software and any copy made thereof by Ordering Activity and to any Product remain with Fortinet. Ordering Activity acknowledges that no title to the intellectual property in the Software or other Products is transferred to Ordering Activity and Ordering Activity will not acquire any rights to the Software or other Products except for the specific license as expressly set forth in section 1 ("License Grant") above.

4. Limited Warranty.

Contractor provides this limited warranty for its product only to the single Ordering Activity person or entity that originally purchased the Product from Contractor or its authorized reseller or distributor and paid for such Product. The warranty is only valid for Products which are registered on Fortinet's Support Website: <https://support.fortinet.com>; or on the TalkSwitch support website: <http://global.talkswitch.com>; or such other website as provided by Contractor. For the below software warranty to start, registration must take place within three hundred sixty-five (365) days from the date the Product was originally shipped from Contractor's facilities or the warranty is null and void and will not be honored. For the hardware warranty, such warranty starts on the earlier of the date of Product registration on Fortinet's Support Website or ninety (90) days from the date that the Product was originally shipped from Contractor's facilities. It is the Contractor distributor's and reseller's responsibility to make clear to the Ordering Activity the date the product was originally shipped from Contractor, and it is the Ordering Activity's responsibility to understand the original ship date from the party from which the end user purchased the product. All warranty claims must be submitted in writing to Contractor before the expiration of the warranty term or such claims are waived in full, i.e. ninety (90) days from the earlier of registration or the automatically started term for hardware and spare parts claims and three hundred sixty-five (365) days from registration within three hundred sixty-five (365) days from shipment for software claims. Contractor provides no warranty for any beta, donation or evaluation Products, for any spare parts not purchased directly from Contractor by the Ordering Activity, for any accessories, or for any stand-alone software.

Contractor warrants that the hardware portion of the Products, including spare parts unless noted otherwise ("Hardware") will be free from material defects in workmanship as compared to the functional specifications for the period set forth as follows and applicable to the Product type ("Hardware Warranty Period"): a three hundred sixty-five (365) day limited warranty for the Hardware excluding spare parts, and, for spare parts, solely a ninety (90) days limited warranty. Contractor's obligation shall be to repair or replace the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labor or installation costs, and any other cost which are not directly associated to the Product. Such repair or replacement will be rendered by Contractor through Fortinet at an authorized Fortinet service facility as determined by Fortinet. The replacement Hardware need not be new or of an identical make, model, or part; Contractor may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Contractor reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The Hardware Warranty Period for the repaired or replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety days from the delivery of the repaired or replacement Hardware. If Contractor determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Contractor upon return to Contractor of the defective Hardware. All Hardware (or part thereof) that is replaced by Contractor, or for which the purchase price is refunded, shall become the property of Contractor upon replacement or refund.

Contractor warrants that the software portion of Hardware Products will substantially conform to Contractor's then current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days ("Software Warranty Period"), if the Software is properly installed on approved Hardware and operated as contemplated in its documentation. Contractor's obligation shall be to

Government Reseller Amendment to the Gigamon Distribution Agreement Page

repair or replace the non-conforming Software with software that substantially conforms to Contractor's functional specifications. Except as otherwise agreed by Contractor in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions in this Attachment A of the license granted by Contractor for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any replacement software is delivered. If Contractor determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Contractor; provided that the non-conforming Software (and all copies thereof) is first returned to Contractor. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Contractor that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Attachment A, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

5. Disclaimer of Other Warranties and Restrictions.

EXCEPT FOR THE LIMITED WARRANTY SPECIFIED IN SECTION 4 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM CONTRACTOR. EXCEPT AS EXPRESSLY COVERED UNDER THE LIMITED WARRANTY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY, SELECTION AND PERFORMANCE OF THE PRODUCT IS WITH THE PURCHASER OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE HARDWARE WARRANTY PERIOD DISCUSSED ABOVE DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIFONE WHICH HAS A NINETY (90) DAY LIMITED WARRANTY AND FORTITOKEN WHICH HAS A 365 DAY WARRANTY FROM THE DATE OF SHIPMENT FROM CONTRACTOR'S FACILITIES, AND THE SOFTWARE WARRANTY DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIGATE-ONE AND VDOM SOFTWARE.

The warranty in Section 4 above does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, donation, testing or demonstration purposes or for which Contractor does not charge a purchase price or license fee. In the case of beta, testing, evaluation, donation or free Software or Product, the end user acknowledges and agrees that such Software or Product may contain bugs or errors and could cause system failures, data loss and other issues, and the Ordering Activity agrees that such Software or Product is provided "as-is" without any warranty whatsoever, and Contractor disclaims any warranty or liability whatsoever. An Ordering Activity's use of evaluation or beta Software or Product is limited to thirty (30) days from original shipment unless otherwise agreed in writing by Contractor.

6. U.S. Government End Users.

The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms of this Attachment A and its successors.

7. Open Source Software.

Fortinet's products may include software modules that are licensed (or sublicensed) to the user under the GNU General Public License, Version 2, of June 1991 ("GPL") or GNU Lesser General Public License, Version 2.1, of February 1999 ("LGPL") or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any Open Source Software covered under the GPL, the source code is made available on this CD or download package. If any Open Source Software licenses require that Contractor provide rights to use, copy or modify a Open Source Software program that are broader than the rights granted in this Attachment A, then such rights shall take precedence over the rights and restrictions herein. All open source software modules are licensed free of charge. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "AS-IS" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third party license disclosures applicable to certain Fortinet products, may be obtained by contacting Contractor through Fortinet's Legal Department at legal@fortinet.com.

EXHIBIT A – FORTICARE/FORTIGUARD SERVICES

DEFINITIONS

1. "Ordering Activity" means any person or entity that has purchased a Service Contract from Contractor.
2. "Defective Unit" means a Product purchased by the Ordering Activity which has ceased to operate in accordance with Fortinet's Product Documentation.
3. "Hardware" means the Fortinet computer peripheral devices excluding all Software incorporated in or bundled with such devices.
4. "No Trouble Found Unit(s)" means a Product that has been returned to Fortinet as a Defective Unit by the Ordering Activity, and is later discovered to be in proper working order.

5. "Product(s)" means any Fortinet Hardware with associated Software or stand-alone Software product which is/are available for sale.
6. "Registration Date" means the date when the Service Contract is registered via Fortinet's website: <https://support.fortinet.com>.
7. "Renewal Service Contract" means a Service Contract (FortiCare and/or FortiGuard), as identified in Contractor's then current GSA price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at Fortinet's Support site.
8. "Return Material Authorization" or "RMA" means the required number or code obtained from Fortinet prior to returning a Defective Unit for a Replacement Unit.
9. "Replacement Unit" means a Product shipped by Fortinet to replace an Ordering Activity reported Defective Unit for which the Ordering Activity has obtained an RMA.
10. "Service Contract" means the purchase order for the Services purchased by the Ordering Activity as evidenced by their Service Contract Registration Document.
11. "Service Plan Documentation" means the Fortinet issued collateral, product description, or documentation which outlines the Services to be performed by Fortinet.
12. "Service Contract Registration Document" means the electronic document emailed by Fortinet with a contract registration number to the email address provided for in the Order Documentation which contains the Ordering Activity's entitlements.
13. "Services" means any individual or combination of Support and/or Subscription services purchased by the Ordering Activity and evidenced in the Ordering Activity's Service Entitlement Document.
14. "Software" means the Fortinet computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by Fortinet.
15. "Subscription Services" means Fortinet's FortiGuard suite of services, per Fortinet's current Customer Support Services Reference Guide, which may include one or all of the following: Antivirus, Antispam, IPS, and Web Filtering.
16. "Support" or "Support Services" means Fortinet's technical telephone, email, and web assistance provided by Fortinet or its Partners, per Fortinet's current Customer Support Services Reference Guide, to help the Ordering Activity with problem resolutions.

SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED

1. Service Contracts Offered. Contractor through Fortinet offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, Fortinet offers Subscription Services and other Product service offerings to protect Ordering Activity's newly purchased assets.
2. Ordering and Use. Each Service Contract purchased by Ordering Activity is valid for a single unit of Product. For clarity, use of a Service Contract with a replacement unit, or with certain upgraded units identified by Contractor through Fortinet as applicable to the Service Contract, shall not be considered a material breach of this Attachment A.

TERMS OF SERVICE

1. Registration. Ordering Activity must register the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by Contractor through Fortinet of the applicable Product and Service Contract to Ordering Activity. SERVICE CONTRACTS WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM CONTRACTOR THROUGH FORTINET SHALL BE FORFEITED AND CONTRACTOR SHALL HAVE NO OBLIGATION TO THE ORDERING ACTIVITY REGARDING THIS ATTACHMENT A OR ANY RELATED SUPPORT SERVICES. It is Ordering Activity's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period. Notwithstanding anything to the contrary, Contractor through Fortinet may register any Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Ordering Activity authorizes Contractor through Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.
2. Renewal Registration. In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the "Renewal Service Contract Effective Date"). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Ordering Activity's previous service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Ordering Activity's previous Services Contract. In such case the start date shall be the date of registration.

For example and for illustration purposes only, in the event a one year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one year Renewal Service

Contract is registered two-hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

3. Support Policy. The delivery of all Services shall be subject to and provided in accordance with Contractor through Fortinet's then current Customer Support Services Reference Guide ("Reference Guide"). The Reference Guide details the Service and Support process and any service levels provided by Contractor through Fortinet with your specific Fortinet Support Services. The Reference Guide is available at the following link <https://support.fortinet.com/Login/UserLogin.aspx>. The Reference Guide is subject to change and Fortinet shall post notices of any changes on the support website <https://support.fortinet.com/Login/UserLogin.aspx> with no less than thirty (30) days notice prior to the effective date of the change. The Ordering Activity hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provide for in any notification, the Ordering Activity accepts and agrees the changes to the Reference Guide. Furthermore, the Ordering Activity hereby acknowledges and agrees that Ordering Activity is solely responsible for adhering to and monitoring Contractor through Fortinet's support website for updates and changes to the Reference Guide.
4. Product Life Cycle Policy. All Services provided hereunder are subject to Fortinet's Product Life Cycle Policy which is available Fortinet's Support website.

POINT OF CONTACT

Contractor through Fortinet may, at its option, provide the Services directly or indirectly, through any of its FortiPartner, agents, or sub-contractors.

DESCRIPTION OF PROGRAMS

1. Principle Period of Services. Services are provided during the hours described in the Reference Guide.
2. Telephone and Email Support. All telephone and email support will be delivered in accordance with any Service Plan Documentation and Fortinet's Support Policy.
3. Web-based Support. The Fortinet corporate website www.fortinet.com provides access to a variety of information including on-line documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the Fortinet support website <https://support.fortinet.com>. This site includes access to the FortiCare ticketing system for product and contract registration as well as creation of ticket and webchat requests. It may also include Subscription Service updates, Maintenance and Feature Releases, and technical support alerts. Login information and passwords are provided upon registration of the account. Ordering Activity hereby agrees and warrants that only authorized information technology personnel shall have access to the login and password information. Contractor through Fortinet shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.
4. Hardware Support. If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with Fortinet's Support Policy. Please refer to Fortinet's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, Contractor through Fortinet is not responsible for any delays in delivery related to export or customer regulations or processes. For any Service Contract which incorporates four-hour replacement Services, Ordering Activity acknowledges that Contractor through Fortinet shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot ("Staging Period"). As such Ordering Activity's four-hour replacement Services shall not commence until the end of such Staging Period.
5. Software/Firmware Updates. If Ordering Activity's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this Attachment A. Ordering Activity may access such updates via password-protected web access. Ordering Activity may install only one (1) copy of the upgrade per product covered by a Service Contract. Support shall be provided on the then-current major release of Product and the previous release of software. At Contractor through Fortinet's option, Fortinet may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration.
6. Real-Time Updates. If the Ordering Activity's Service Contract contains Subscription Services, the Ordering Activity will have access to Contractor through Fortinet's real-time Anti-Virus and Network Intrusion Detection System ("NIDS") updates that will protect the Ordering Activity against some of the latest network-based threats. These updates may either be pushed to properly configured and authorized Products, retrieved on a pre-scheduled basis, or retrieved manually by the Ordering Activity.

EXCLUSIONS

1. General. Ordering Activity acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, Contractor through Fortinet may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by Contractor through Fortinet hereunder do not include warranty, support and/or maintenance for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Fortinet. Contractor through Fortinet is not required to provide Services for problems arising from: (i) Ordering Activity's failure to implement all maintenance or features issued under this Attachment A; (ii) any alterations of or additions to the Products performed by parties other than Contractor through Fortinet; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by Contractor through Fortinet.

2. On-Site Support Not Included. Support Services are strictly limited to telephone and electronic support.
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LICENSE

All updates or upgrades to Software or Hardware provided for under this Attachment A shall be deemed to be included within the Products and subject to these Attachment A License terms and conditions. Further, Ordering Activity hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any proprietary or copyright restrictions from any Product or support updates or software; (iii) not to copy the Product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software in any other software program; (iv) only to use the Product and support updates and software for internal business purposes, and (v) to keep confidential any software and support updates and not share them with third parties.

WARRANTY

Except as expressly stated otherwise, maintenance releases, updates and upgrades provided hereunder are warranted for the remaining software warranty period of the original Product purchased, if any, as specified in this Attachment A. Nothing in this Attachment A shall be construed as expanding or adding to the warranty set forth above. Contractor cannot guarantee that every question or problem raised in connection with the Services will be addressed or resolved. EXCEPT FOR WARRANTIES CLEARLY AND EXPRESSLY STATED HEREIN, NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND, TO THE EXTENT PERMISSIBLE BY LAW, FORTINET SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

Fujitsu Network Communications, Inc.
2801 Telecom Parkway
Richardson, TX 75082

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

FUJITSU NETWORK COMMUNICATIONS

FUJITSU NETWORK COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS

1. **Grant of License.** Upon delivery or access of the Licensed Product to Ordering Activity and payment by Ordering Activity of the applicable annual license fee for base software and individually licensed Software features or other consideration as determined by Contractor, Contractor grants to Ordering Activity a restricted, personal, nontransferable and non-exclusive right-to-use license to the Software that is embedded in, loaded, activated, or downloaded into applicable Fujitsu Network Communications ("FNC") equipment and use of the Documentation, solely for Ordering Activity's internal business purposes and only on or for the products Ordering Activity obtains from Contractor.
2. **U.S. Government Rights.** If the Licensed Products are being provided to the United States Government they are, to the maximum extent permitted under applicable laws and regulations, provided pursuant to the terms, and subject to the limitations, of this Attachment A. To the extent that applicable laws and regulations grant the Government greater rights than provided by this Attachment A, then the Government receives only the minimum rights required by such laws and regulations. Development of the Licensed Products was privately funded and use, reproduction, or disclosure is subject to restrictions set forth in any of the following that are applicable: paragraph (c) of the Commercial Computer Software - Restricted Rights (June 1987) clause at FAR 52.227-19, the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data - General (June 1987) clause at FAR 52.227-14, DFARS 227.7202-3, and the Technical Data - Commercial Items (Nov. 1995) clause at DFARS 252.227-7015, all as may be amended from time to time.
3. **Restrictions.** Ordering Activity may not: (i) modify, adapt, translate, reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from or create or prepare derivative works of or from the Licensed Products, (ii) distribute, sublicense, rent, lease, loan, or make unauthorized copies of any portion of the Licensed Products, (iii) publicly display visual output or publish any test results of the Software, or (iv) use the Software in inherently high-risk applications such as, but not limited to, aircraft navigation or communications, nuclear facilities, mass transit, or medical emergency communications. Ordering Activity is authorized to make one copy of the Software in any machine-readable medium for backup or archival purposes in support of Ordering Activity's permitted use hereunder. Ordering Activity may not lend, sublicense, rent or lease the Software, or otherwise make it available to any third party, or transfer or assign this Attachment A or any rights hereunder. Any portion of the Software merged into another software program will continue to be subject to the terms and conditions of this Attachment A. The Software is licensed as a single product with individual Software license features, and it may not be separated for use other than as permitted above.
4. **SOFTWARE ACCESS.** Ordering Activity may obtain the Software by downloading a copy from the FNC website or a CD, or entering the applicable machine line code ("TL1 Command") on equipment preloaded with the Software.
5. **Ownership of the Licensed Products.** The Licensed Products are licensed, not sold. Ordering Activity agrees that all right, title, and interest, including all copyright, patent, trademark, trade secret and other intellectual property rights in and to the Licensed Products and all complete or partial copies thereof belong exclusively to FNC or its licensors, and this Attachment A does not transfer or assign any such rights. The Licensed Products are protected by copyright and other laws and international treaties. Ordering Activity agrees to mark any copies of the Software Ordering Activity is permitted to make under this Attachment A with the applicable copyright notice provided by FNC. Except as expressly granted in this Attachment A, no right or license, whether express or implied, by estoppel or otherwise, is granted in any copyright, patent, trademark, trade secret, or other intellectual property of FNC or its licensors.
6. **Warranty Disclaimer and Limitation.** EXCEPT AS PROVIDED IN THE AGREEMENT BETWEEN CONTRACTOR AND ORDERING ACTIVITY, THE LICENSED PRODUCTS ARE LICENSED TO ORDERING ACTIVITY "AS IS". CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY WARRANTIES CLAIMED TO ARISE FROM PERFORMANCE OR CUSTOM OR USAGE OF TRADE WITH RESPECT TO THE LICENSED PRODUCTS. ORDERING ACTIVITY ASSUMES ALL RISK RELATING TO USE OF THE LICENSED PRODUCTS. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOST PROFITS, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF DATA, OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

GitLab, Inc.
1233 Howard St #2F
San Francisco, CA 94103

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

GitLab, Inc.

GitLab, Inc. LICENSE, WARRANTY AND SUPPORT TERMS

1. LICENSE AND SUPPORT

1.1 Subject to the terms and conditions of this Agreement, GitLab hereby grants to Customer and its Affiliates (as defined below) a limited, non-exclusive, nontransferable, non-sublicensable license for Customer's and its Affiliates' employees and contractors to (1) internally (a) use, reproduce, modify, prepare derivative works based upon, and display the code of GitLab Enterprise Edition at the tier level selected by Customer with the specifications generally promulgated by GitLab from time to time (the "Software"), excluding additional Products for the Enterprise Edition unless listed on the Quote, solely (i) for its internal use in connection with the development of Customer's and/or its Affiliates' own software, and (ii) by the number of internal users for which

Customer has paid GitLab; and (b) use the documentation, training materials or other materials supplied by GitLab (the "Other GitLab Materials"); and (2) modify the Software and publish patches to the Software, solely by the number of internal users for which Customer has paid GitLab. Notwithstanding anything to the contrary, Customer agrees that GitLab and/or its licensors (as applicable) retain all right, title and interest in and to all Software incorporated in such modifications and/or patches, and all such Software may only be used, copied, modified, displayed, distributed, or otherwise exploited in full compliance with this Agreement, and with a valid GitLab Enterprise Edition subscription for the correct number of user seats. The Software and Other GitLab Materials are collectively referred to herein as the "Licensed Materials."

"Affiliate" means any entity(ies) controlling, controlled by, and/or under common control with a party hereto, where "control" means the ownership of more than 50% of the voting securities in such entity.

1.2 Subject to the terms hereof, GitLab will provide reasonable support to Customer for the Licensed Materials as set forth in the underlying GSA Schedule Contract. 1.2.1 GitLab will use reasonable commercial efforts to respond to support questions by phone or email during the next business day at the latest. The number of support questions is not limited.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as expressly authorized in Section 1.1, Customer will not, and will not permit any third party to: use the Licensed Materials for any purpose other than as specifically authorized in Section 1, or in such a manner that would enable any unlicensed person to access the Licensed Materials; use the Licensed Materials or any other GitLab software for timesharing or service bureau purposes or for any purpose other than its own internal use (including without limitation, sublicensing, distributing, selling, reselling any of the foregoing); except as expressly permitted herein; use the Licensed Materials in connection with any high risk or strict liability activity (including, without limitation, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital and medical operations or the like); use the Licensed Materials or software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any privacy laws, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation); or use the Licensed Materials in any manner that (1) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (2) impersonates any person or entity, including without limitation any employee or representative of GitLab, or (3) contains a virus, Trojan horse, worm, time bomb, unsolicited bulk, commercial, or "spam" message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs).

2.2 Customer will cooperate with GitLab in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as GitLab may reasonably request. Customer will also cooperate with GitLab in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Licensed Materials. Customer shall maintain during the term of this Agreement and through the end of the third year after the date on which the final payment is made under this Agreement, books, records, contracts and accounts relating to the payments due GitLab under this Agreement (collectively, the "Customer Records"). GitLab may, at its sole expense, upon 30 days' prior written notice to Customer and during Customer's normal business hours and subject to industry-standard confidentiality obligations, hire an independent third party auditor to audit the Customer Records only to verify the amounts payable under this Agreement.

2.3 Customer will be responsible for maintaining the security of Customer's account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.

3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Without limiting the foregoing, the Licensed Materials are GitLab Proprietary Information.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (i) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, GitLab may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Licensed Materials' performance and Customer's usage of the Licensed Materials; provided that GitLab will

not identify Customer as the source of any such data without Customer's prior written consent. However, courts of competent jurisdiction may require certain information to be released. Federal agencies are subject to the Freedom of Information Act (FOIA) (5USC 552), and some information may be released despite being characterized as confidential by GitLab.

3.3. Both parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Except as expressly set forth herein, GitLab alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Licensed Materials and any suggestions, ideas, enhancement requests, feedback, code, recommendations or other information provided by Customer or any third party relating to the Licensed Materials, which are hereby assigned to GitLab. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Licensed Materials, or any intellectual property rights.

4.2 Customer shall not remove, alter or obscure any of GitLab's (or its licensors') copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of GitLab's (or its licensors') ownership or contribution from the Licensed Materials. Additionally, Customer agrees to reproduce and include GitLab's (and its licensors') proprietary and copyright notices on any copies of the Licensed Materials, or on any portion thereof, including reproduction of the copyright notice. Notwithstanding anything to the contrary herein, any part of the Licensed Materials distributed by GitLab as part of the GitLab Community Edition is licensed under the terms of the MIT License.

4.3 Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all software, information, content and data provided by or on behalf of Customer or made available or otherwise distributed through use of the Licensed Materials ("Content") and the intellectual property rights with respect to that Content. Subject to the foregoing, GitLab may participate in the defense and/or settlement of any applicable Claim with counsel of its choosing at its own expense to the extent permitted by 28 U.S.C. 516

4.4 GitLab will defend, indemnify and hold Customer harmless from liability and other amounts paid or payable to unaffiliated third parties resulting from (i) the infringement or violation of any intellectual property or proprietary rights by the Licensed Materials or (ii) the violation of applicable law or regulation by GitLab in performance of its obligations hereunder, provided GitLab is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement thereof. Subject to the foregoing, Customer may participate in the defense and/or settlement of any claim that is indemnifiable by GitLab with counsel of its choosing at its own expense. The foregoing obligations do not apply with respect to portions or components of the Licensed Materials (i) not created by GitLab, (ii) that are modified after delivery by GitLab, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer's use of the Licensed Materials is not strictly in accordance with this Agreement and all related documentation.

5. PAYMENT OF FEES

5.1 Unless and until GitLab and Customer have executed a quote document specifically referencing this Agreement with respect to amounts due on account of the Licensed Materials (a "Quote", which is hereby incorporated by reference, if applicable), Customer will pay GitLab the applicable fees as set forth at <https://about.gitlab.com/pricing/> (the "Pricing") for the Licensed Materials selected and/or used by Customer (the "Fees") without any right of set-off or deduction. To the extent applicable, Customer will pay GitLab for additional services, such as integration fees or other consulting fees agreed by both parties hereto in writing (email to suffice). On each anniversary of the Effective Date, GitLab will invoice Customer with respect to any and all additional Customer users of the Licensed Materials beyond those for whom Customer has pre-paid, as of such date (and for whom the Fees due pursuant to such invoice will be the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to the year just ended, and the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to all subsequent years, unless otherwise agreed in writing by both parties (collectively, a "True-Up")). For Customers that have pre-paid all Fees for multi-year subscriptions for Licensed Materials pursuant to a Quote, on each anniversary of the Effective Date during the term of this Agreement, (i) a new license key will be provided, and (ii) a True-Up will be conducted. All additional users purchased shall be coterminated through the end of the original Subscription period.

5.2 All payments and invoice terms will be made in accordance with FAR 52.212-4 and the underlying GSA Schedule Contract. Except as expressly set forth in this Agreement, all Fees paid and/or due hereunder (including any prepaid amounts) are non-refundable, including without limitation if this Agreement is terminated in accordance with Section 6 below. If Customer terminates this Agreement pursuant to Section 6.2 within 45 calendar days from receipt of the initial invoice for the Licensed Materials, GitLab will refund all Fees paid hereunder.

5.3 Payments not received when due shall be governed by the Prompt Payment Act (31 USC 3901 *et seq*) and Treasury regulations at 5 CCR 1315. Additionally, notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Gitlab shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6. TERMINATION

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

6.2 Customer's rights to the Licensed Materials, and any licenses granted hereunder, shall terminate upon any termination of this Agreement. **7. WARRANTY; CUSTOMER SOFTWARE SECURITY**

GitLab represents and warrants that (i) it has all rights and licenses necessary for it to perform its obligations hereunder, and (ii) it will not knowingly include, in any GitLab software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, Trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, GitLab fails to comply with the warranty in this Section, Customer may promptly notify GitLab in writing of any such noncompliance. GitLab will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance.

8. WARRANTY DISCLAIMER

Gitlab warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. Except as just stated, THE LICENSED MATERIALS, SOFTWARE AND GITLAB PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. GITLAB HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR THEIR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, ANY DELAY OR INABILITY TO USE THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EACH PARTY AND ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) ONE THOUSAND DOLLARS (\$1,000), OR (ii) THE FEES PAID TO GITLAB HEREUNDER IN ONE YEAR PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Gitlab's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

10. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Licensed Materials or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of the Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of the Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Licensed Materials is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by GitLab are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party without the other party's prior written consent, not to be unreasonably withheld or delayed; provided that either party may transfer and/or assign this Agreement to a successor in the event of a sale of all or substantially all of its business or assets to which this Agreement relates. Both parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or

EC America, Inc.

a subsidiary of  immixGroup

registered mail (return receipt requested), postage prepaid. GitLab will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United State of America.

Globalscape, Inc.
4500 Lockhill Selman Rd.
Suite 150
San Antonio, TX 78249

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

4. **Scope.** This Rider and the attached Globalscape, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").
5. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.
 - f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
 - g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.
 - h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.
 - i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.
 - j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.
 - k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

- l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.
 - m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
 - n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
 - o) **Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
 - p) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
 - q) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.
 - r) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.
6. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

Attachment A – GlobalSCAPE

1. **SOFTWARE.** The capitalized term "Software" refers to the object code for the computer program known as Enhanced File Transfer Server Enterprise (or EFT Server Enterprise) Version 7.1, including the Server Program and the Administrator Interface and all Optional Add-On Modules, which may include without limitation the AWE Module (as defined in Section 2 below), you may purchase and any updates, supplemental code or programs provided to you by GlobalSCAPE with or in connection with Enhanced File Transfer Server Enterprise Version 7.1, such as the user's manual and Help file, any components, any related media and printed materials, and any related "online" or electronic documentation.

2. GRANT OF LICENSE.

A. **EVALUATION LICENSE.** If you acquired the license for any component of the Software on an evaluation or trial basis, you may use the Software without charge for the evaluation period. Your evaluation period begins on the day the evaluation serial number is issued by GlobalSCAPE. You must pay the license fee and activate your copy in the manner required below to continue to use the Software after the evaluation period. An evaluation license for the Software may not be transferred to any other person.

B. STANDARD LICENSE.

(i) **SERVER PROGRAM.** You may install and use one copy of the Server Program on that number of server computers for which you have purchased a separate license as indicated on your ordering document.

(ii) **ADMINISTRATOR INTERFACE.** For so long as you have an active license to use the Server Program, you may copy, install and use the Administrator Interface on as many personal desktop computers as you wish.

(iii) OPTIONAL ADD-ON MODULES.

(a) **WEB TRANSFER CLIENT.** You may concurrently use that number of Web Transfer Clients for which you have paid a separate license fee as indicated on your invoice or sales receipt. If you wish to increase the number of concurrent users after your initial license purchase, upon issuing an order for the additional license fee you will be issued a new registration serial number which will be utilized to activate the additional Web Transfer Client licenses purchased and to re-activate the Web Transfer Client licenses previously purchased.

(b) **SECURE AD HOC TRANSFER MODULE.** If you have purchased a separate license for the Secure Ad Hoc Transfer module (hereafter referred to as "SAT Module"), you may install and use one copy of the SAT Module on that number of server computers for which you have purchased a license as indicated on your ordering document. The SAT Module shall be installed solely on the same server(s) as the Server Program. It is your duty, at your cost, to install and maintain the SAT Module and to acquire, install and maintain Microsoft IIS and all necessary equipment and connectivity required to use the SAT Module. Notwithstanding the restrictions in Section 7.1 but subject at all times to GlobalSCAPE's rights set forth in Section 13, you may modify the SAT Module solely to customize the web interface to the Software created through the SAT Module. Upon modification, however, GlobalSCAPE shall have no further obligations under Section 8 or any related M & S Plan in relation to the Secure SAT module. If you purchase

additional copies of the SAT Module for back-up or archival purposes, you will need to make all applicable modifications to the newly licensed copies.

(c) **ADVANCED WORKFLOW ENGINE.** If you have purchased a separate license for the Advanced Workflow Engine module ("AWE Module"), you may install and use one copy of the AWE Module on that number of computers for which you have purchased a license as indicated on your invoice or sales receipt. You may not separate the AWE Module for use on more than one computer. Certain consents required to be obtained from GlobalSCAPE pursuant to this Agreement may also require the consent of Network Automation, Inc. ("NAI"). You acknowledge that you have only the limited, non-exclusive right to use and copy the AWE Module as expressly stated in this Agreement and that GlobalSCAPE and NAI, as the case may be, retains title to the Software and all other rights not expressly granted herein.

(d) **MOBILE TRANSFER CLIENT.** If you have purchased a license for The Mobile Transfer Client (hereafter referred to as "MTC") module, each user for which you have paid may install and use the MTC on as many devices as desired. For example, if you purchase a license to the MTC for up to 99 users, up to 99 individuals can use the MTC on any device(s) on which they choose to install the MTC application, but only up to 99 named individuals, in aggregate, may access and use the MTC module. If you wish to increase the number of users after your initial license purchase, upon issuing an order for the additional license fee, you will be issued a new registration serial number that will be used to activate the additional MTC licenses purchased and to re-activate the licenses previously purchased.

(e) **WORKSPACES.** If you have purchased a license for Workspaces, each user for which you have paid may create as many Workspaces as desired. For example, if you purchase a Workspaces license for up to 99 Workspace owners, up to 99 individuals can create and maintain Workspaces at a given time. If you wish to increase the number of users after your initial license purchase, upon issuing an order for the additional license fee, you will be issued a new registration serial number that will be used to activate the additional Workspaces licenses purchased and to re-activate the licenses previously purchased.

C. STANDBY OR DEVELOPMENT LICENSE. If you have purchased a license to use the Server Program and/or the Add-On on a non-production basis, then you may use the Server Program and/or Add-On so licensed only as follows:

(i) **STANDBY LICENSE:** One (1) copy on a standby computer that is not processing traffic or doing work of any kind except in the event that, and only for so long as, the primary production server upon which the Server Program license is associated is offline.

(ii) **DEVELOPMENT LICENSE:** One (1) copy on a server (and associated desktop personal computers) used solely for testing, evaluation, or API development, so long as such server does not process actual traffic in a production environment.

D. ACTIVATION. You must activate the evaluation or standard license for the Software by entering the evaluation or registration serial number as prompted by the Software and as otherwise instructed by GlobalSCAPE

E. RESERVED.

3. RIGHT TO COPY OR BACKUP. You may make one copy of the Software or the installation media for the Software solely for back-up or archival purposes at no additional charge.

4. UPGRADES. To use Software identified as an upgrade, or new version, you must first be licensed for the Software identified by GlobalSCAPE as eligible for the upgrade and issue an order for the purchase of the upgrade or new version. After upgrading, you may no longer use the Software that formed the basis for your upgrade eligibility and the license for that Software shall be deemed immediately terminated upon your installation of the upgrade.

5. TRANSFER. You may use the Software solely for your internal business process as contemplated by this Agreement and shall not license, sub-license, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than as contemplated by this Agreement, without the prior written consent of GlobalSCAPE. You shall not sell, sell access to, or sell use of the Software or utilize the Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You shall not use the Software in connection with the provision of a service to any third party that includes file transfer or any other service that is a substitute for some or all the Software's functions without the prior written consent of GlobalSCAPE. If modifications are made to a SAT Module as permitted herein, such modification may only be used for your internal business purposes and may not be licensed or sublicensed or otherwise provided to any third party. You may, however, make a one-time permanent transfer of all of your license rights to the Software to another party, provided that: (a) the transfer must include all of the Software, including all component parts, programs, media, printed materials, all registration serial numbers, all modules you purchase in conjunction with the Software, and this license in connection with the sale of all or substantially all of the assets for that line of business; (b) you do not retain any copies of the Software, full or partial, including copies stored on a computer or other storage device; (c) the person to whom you transfer the Software agrees to be bound by the terms of this license; and (d) you provide notice to GlobalSCAPE at least 10 days prior to such transfer of the identity and contact information for the transferee and such transferee is not a competitor of GlobalSCAPE as determined by GlobalSCAPE in its sole discretion. If you purchased the license for the Software on a multi-computer basis-that is, one registration serial number valid for the number of computers indicated on your invoice, you may permanently assign your rights under this license to only a single person or entity. Notwithstanding anything else in this Agreement to the contrary, a license for the Software provided on a free, promotional, or "not-for-resale" (NFR) basis may be used only for testing, demonstration or evaluation and may not be sold or transferred to another person in any manner.

6. INFORMATION COLLECTION AND PRIVACY. The Software includes a feature that assigns a unique identifier to your computer based on system information. The Software reports this identifier to GlobalSCAPE either when you install the Software, enter your evaluation serial number, or enter your registration serial number, or upon the occurrence of each of these. During the evaluation period, the Software will contact our registration and activation servers periodically to verify that the Software is still eligible for use

on an evaluation basis. The Software may also identify and report to us your Windows language identifier setting, IP address, and the date and time of installation and/or activation. GlobalSCAPE uses this information to count installations, detect piracy of the Software, and develop rough statistical data regarding the geographic location of the Software users. GlobalSCAPE may tie this information to personally identifiable information it has about you. GlobalSCAPE may use any non-proprietary information you provide as part of obtaining support services for GlobalSCAPE's business purposes, including product support and development.

7. RESTRICTIONS. You may not reduce the Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not use the Software to perform any unauthorized transfer of information, such as copying or transferring a file in violation of a copyright, in violation of any laws related to the transfer of encrypted data or for any illegal purpose.

8. MAINTENANCE AND TECHNICAL SUPPORT SERVICES. If you purchased a maintenance and support plan ("M & S Plan"), GlobalSCAPE shall provide the support services at the level agreed by you and Contractor in an applicable ordering document and as defined in the GlobalSCAPE Maintenance and Support Guide (Exhibit 1) (the "Guide"). To be eligible for maintenance and support services, the Server Program and the Administrator Interface as well as all associated Add-On Modules must be covered by an active M & S Plan.

9. RESERVED.

10. SECURITY. The Software creates a means for others to gain access to your computer. Although we have taken commercially reasonable measures to prevent unauthorized persons from gaining access to your computer via the Software, we cannot foresee or control the actions of third parties. Therefore, use of the Software will make you vulnerable to security breaches that you might not otherwise face and could result in the loss of your privacy or property. You are responsible for your use of the Software or otherwise. Use of secure passwords and keeping passwords confidential are not the responsibility of GlobalSCAPE or the Software.

11. RESERVED.

12. RESERVED.

13. INTELLECTUAL PROPERTY. You acknowledge that you have only the limited, non-exclusive right to use and copy the Software as expressly stated in this Agreement and that GlobalSCAPE retains title to the Software and all other rights not expressly granted. You agree not to remove or modify any copyright, trademark, patent, or other proprietary notices that appear, on, in or with the Software. The Software and all derivatives thereof, including any modifications made to the SAT Module are protected by United States copyright, patent and trademark law and rights granted by international treaties related to intellectual property rights. The Software is copyright (c) 2004-2015 GlobalSCAPE, Inc. All rights reserved.

14. EXPORT RESTRICTIONS. THE SOFTWARE CONTAINS ENCRYPTION TECHNOLOGY THAT IS CONTROLLED FOR EXPORT BY THE U.S. GOVERNMENT. You agree to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that (i) the Software is not exported, directly or indirectly (including as a result of providing access to the Software to a national or resident of and embargoed or restricted country), in violation of Export Laws, or the applicable laws of any other jurisdiction or (ii) or provided to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List. Among other things, the Export Laws provide that the Software may not be exported or re-exported to certain countries that are embargoed or restricted, or to certain restricted persons. Embargoed and restricted countries currently include but are not limited to Cuba, Iran, Libya, North Korea, Syria and Sudan. In addition to other restrictions described in this section, you may not use the Software, or export the Software to any destination where you know or have reason to know that the Software may be used, in connection with the proliferation of nuclear, chemical or biological weapons or missiles.

15. WARRANTIES. THE WARRANTY IS LIMITED TO NINETY (90) DAYS FROM YOUR RECEIPT OF A COPY OF THE SOFTWARE. COMPUTER PROGRAMS ARE INHERENTLY COMPLEX, AND THE SOFTWARE MAY NOT BE FREE OF ERRORS. THE SOFTWARE IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. GLOBALSCAPE DISCLAIMS ALL LIABILITY FOR ANY ACTION THAT YOU, YOUR DESIGNEE, OR YOUR AGENTS MIGHT TAKE IN CONNECTION WITH, OR IN RELIANCE UPON, THE TRANSMISSION OR RECEIPT OF ANY MESSAGE USING THE SOFTWARE. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

16. RESERVED.

17. U.S. GOVERNMENT. The Software is commercial computer software developed solely at private expense. The rights of civilian and non-civilian agencies of the U.S. Government to use, disclose and reproduce the Software are governed by the terms of this Agreement. Publisher is GlobalSCAPE Inc., 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249, USA.

18. RESERVED.

Exhibit 1 – Client Support Services Maintenance and Support Guide Meeting Client Needs

Our Client Support Services team is committed to helping you, our trusted partner, be successful! To this end, Globalscape offers world-class client support and product maintenance to help ensure that your Globalscape implementation is a success. We take pride in optimizing the business value of your security solution and realize that one size doesn't always fit all. That's why we've developed varying levels of technical support to ensure that you get the service your business deserves.

Online services include product updates, user guides, a knowledgebase, online help files, printable documentation, a user community discussion forum, and more. In addition to our self-service resources that are available to all customers at the Globalscape website, we offer two Maintenance and Support plans: a Standard Plan and a Platinum Plan. Both plans include the same level of software maintenance protection. The Platinum Maintenance and Support plan provides you with emergency support anytime, 24 hours per day, seven days per week from your assigned support technicians. As part of this commitment, our maintenance and support program includes the following:
World Wide Web Support

Take advantage of the easy-to-use, 24-hour support resources that are available on the Globalscape Support Center Web site at <http://support.globalscape.com>. Online services include product updates/ notifications, user's guides, a knowledge base, online help files, printable documentation, a user community discussion forum and more.

Email Support

Submit your request via our online submission form available on the Globalscape Support Center Web site at <http://www.globalscape.com/support/techsupport.aspx> and receive an answer via email or telephone. Our response will include a ticket number and the name of the assigned support professional.

Telephone Support

Standard Support Plan members can call us at 1-210-366-3993, Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time) for help with any product-related issue.

Additionally, Platinum Support Plan members can receive emergency after-hours technical support 24 hours per day, seven days per week. After hours Platinum Support services are available only via a special telephone number that will be provided when you purchase a Platinum Support Plan.

Maintenance and Support Plans

Included with your active support plan is software maintenance, which provides all major upgrades and minor updates that are publicly released during the term of the agreement at no additional charge. Free upgrades must be requested or obtained while the maintenance and support plan remains in force.

Globalscape offers both Standard and Platinum Support plans for our enterprise software solutions. Both plans include the same level of software maintenance protection. A Platinum Maintenance and Support plan provides you with emergency access to our support professionals anytime, 24 hours per day, seven days per week.

Plan Details

Plan Benefits	Standard Plan	Platinum Plan
Priority Telephone Support	Regular business hours	24h/7d*
Minimum Term	12 Months	12 Months
Priority Email Technical Support†	Unlimited	Unlimited
Access to the User Discussion Forum	Unlimited	Unlimited
Access to Online Self-Help Resources	Unlimited	Unlimited
Software Upgrades and Updates	Unlimited	Unlimited

†Email technical support is available through our online submission form.

Business Hours

Our regular business hours are Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time). Platinum support plan members can call the Platinum Support Line anytime, 24 hours per day, seven days per week*.

*Routine requests are handled during normal business hours. Priority service for production system emergencies is available at any time.

†Email technical support is available through our online submission form.

Contacting Technical Support

Type of Contact	Address or Number	Hours
Standard Technical Support Line	1-210-366-3993	8:00am to 6:00pm M – F
Platinum Technical Support Line	(Provided with Platinum Plan)	Anytime
Priority Email Technical Support	http://www.globalscape.com/support/techsupport.aspx	Anytime

Online Support Center / Software Upgrades and Updates	http://www.globalscape.com/support /	Anytime
Serial Number Assistance	http://www.globalscape.com/support /lostserial.aspx	Anytime
Knowledge Base	http://kb.globalscape.com	Anytime
User Discussion Forum	http://forums.globalscape.com	Anytime

Troubleshooting and Diagnostics

When contacting the Globalscape Technical Support team, it is important to provide as much detail as possible about the problem. Please gather as much diagnostic and logging information as possible to help us in our diagnosis of the issue. Be prepared to provide us with relevant error logs or messages including server log files, screen shots, and event log reports. At a minimum, please gather the following details. If you are submitting an inquiry via our online submission form, please provide these details with your submission:

- ☐ Your name and company name
- ☐ Your telephone number and email address
- ☐ The name of the program and complete version information (From Help > About)
- ☐ Product serial number (From Help > About or Platinum Support Plan membership card)
- ☐ Your operating system and specific version information
 - o A complete description of the problem including:
 - o All of the steps necessary to reproduce the problem
- ☐ A description of the environment and the network; useful information includes the data flow, Java runtime version, and database versions

Generally, service tickets are not closed until you and the Globalscape Support Professional both agree that the issue has been satisfactorily resolved. However, Globalscape support may close a service ticket if you have not provided requested information within a reasonable period.

Your Responsibilities

During the course of an issue's diagnosis and resolution, we ask you to respond to all technical information requests as quickly as possible so that our Technical Support team can resolve your case in a timely manner.

Level of Severity	After-hours Acknowledgement ¹	Target Initial 2 Response Time	Resolution ³
Production system outage Product unusable, complete disruption of work, critical business impact. No workaround immediately available.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - Same Business Day Platinum Plan - Two Hours	• Satisfactory workaround is provided • Product patch is provided • Fix incorporated into future release • Fix or workaround incorporated into knowledge base
Major feature or function failure Operations are severely restricted, but a workaround is available.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - One Business Day Platinum Plan - 12 Hours	• Satisfactory workaround is provided • Product patch is provided • Fix incorporated into future release • Fix or workaround incorporated into knowledge base
Minor feature or function failure. General usage questions. Product not working as designed. Minor usage impact; acceptable workaround deployed. Documentation, general information, or enhancement requested.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - Three Business Days Platinum Plan - One Business Day	• Answer to question is provided • Satisfactory workaround provided • Fix or workaround incorporated into knowledge base • Fix incorporated into future release

1. After-Hours Acknowledgement: An initial call back to acknowledge our receipt of the issue and to determine the level of severity. The acknowledgement may be combined with the Initial Response.
2. Target Initial Response Time: Globalscape uses commercially reasonable efforts to respond within the target response time but cannot guarantee response times.
3. Resolution: A satisfactory resolution may not be immediately available or provided with the initial response, in which case Globalscape will use commercially reasonable means and effort to provide a resolution within a reasonable period.

Issue Escalation

Our support professionals follow predefined processes to gather information for identification and resolution of issues. For some issues, our support professionals may need to escalate the issue to software development in order to resolve it.

The escalation process allows for wider review of the issue, including technical and management directives for applying additional resources to the problem, and increased levels of communication between your organization and Globalscape.

If at any time you are not satisfied with the level of support that is being provided to you, we encourage you to bring this to the attention of Globalscape's management staff. Please contact one of the Globalscape Support managers listed below. At our discretion, we may assign an account manager, product manager, or problem resolution team to focus on your issue.

Director, EFT Product Support	Amit Patel	1-210-293-7909	apatel@globalscape.com
Senior Director, Client Support Services	Jason Reams	1-210-308-8267	jreams@globalscape.com

Scope of Technical Support

While we are happy to support your use of our products, and will help in overcoming any difficulties you may encounter, there are certain limitations to the technical support that we can provide.

☐ Technical Support is limited to the reporting and correction of product defects and installation and configuration assistance.

☐ Technical Support does not include support for problems related to the failure of your system, network, or environment to comply with the system requirements for the software.

☐ Technical Support does not include support for development or consulting issues such as COM or other programmatic development. This includes HTML development and custom script creation.

☐ While we constantly strive to assist in any way we can, there can be situations that are outside our control. Technical support does not include support for any other issues not directly related to the workings of our software.

☐ Technical support is offered for recent versions of Globalscape software only. Technical support for older versions is available only through our online self-help resources.

It is always recommended that you begin by examining the program help files, knowledgebase articles, and user forums if you are interested in customizing your environment or software beyond the availability of technical support options. You can also engage the services of our Professional Services team, described on our website at <http://www.globalscape.com/services/pro-services.aspx>.

Globalscape End of Life (EOL) and Support Life Policy

Rapidly changing technologies as well as competitive pressures influence the level, timing, and nature of demand for a particular product or group of products. These factors drive the need to introduce new products and services and to actively plan for end-of-life for older software versions as well as specific product lines. With that in mind, we have provided the Globalscape end-of-life (EOL) policy to help customers better manage their end-of-life transition and to understand the role that Globalscape can play in helping to migrate to alternative Globalscape technologies. A copy of the policy can be provided upon request.

Support Agreement

The technical support services described in this Guide are provided pursuant to the terms of the License Agreement you entered into as a condition to the installation of the software indicated below.

Please complete the information below and fax or mail to:

GlobalSCAPE, Inc.
4500 Lockhill Selma Rd., Suite 150
San Antonio, Texas 78249-2073
Fax: 1-210-293-8003

Guidance Software
215 North Marengo Avenue
Pasadena, CA 91106

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

7. **Scope.** This Rider and the attached Guidance Software ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").
8. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.
 - f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
 - g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.
 - h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.
 - i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.
 - j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.
 - k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

- l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.
- m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
- n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
- o) **Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
- p) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- q) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.
- r) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.
- t) **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

GUIDANCE SOFTWARE

GUIDANCE SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS:

- 1.1 "Attachment A" means these supplemental Guidance Software License and Maintenance Terms and Conditions.
- 1.2 "Concurrent User" means one (1) user running one (1) interactive or batch session of any Licensed Product (or one (1) of each of the Licensed Products in a licensed bundle listed on any purchase order, in any combination) on one (1) computer at one given moment.
- 1.3 "Concurrent Connection" means one (1) Concurrent User connected to one target computer for analysis during an interactive or batch session of any Licensed Product at one given moment. For any license that specifies the number of Concurrent Connections, the Licensed Product must be accessed only from within the site where it is installed.
- 1.4 "Ordering Activity" means the entity named on any applicable purchase order delivered to Contractor hereunder for the purchase of any particular Licensed Product.
- 1.5 "Effective Date" means the date that Ordering Activity's applicable purchase order for the purchase of any particular Licensed Product is accepted by Contractor.
- 1.6 "Guidance" means Guidance Software, Inc.
- 1.7 "Licensed Product" means Guidance's proprietary computer program(s) in object code form (including any accompanying Documentation, manuals, Upgrades, Releases, embedded third party computer program(s), databases, enhancements, and instructions, purchased by delivered to Customer and any copies thereof pursuant to this Attachment A. Licensed Product shall include, without limitation, the EnCase® Enterprise SAFE Server Software, any EnScript® programming language, the EnCase® Examiner Software and the node

servlets. Licensed Product shall also include the accompanying computer disks, hardware security device and, if applicable, any hardware computer, hard drive or server delivered to Ordering Activity by Guidance.

1.8 "Standard Support Policy" means Guidance's then-current Standard Support Policy which is described herein as Exhibit B.

1.9 "Supported Computer(s)" means one or more computers owned or leased by Ordering Activity, and under Ordering

Activity's control, of a manufacturer, model and operating system for which Guidance offers a current version of the Licensed Product. Subject to the restrictions set forth in this Attachment A, the Ordering Activity may at its sole discretion and expense transfer or move the Licensed Product from one Supported Computer to another Supported Computer at any time.

2. LICENSE GRANT:

2.1 General. Subject to the terms and conditions of this Attachment A, Contractor grants and Ordering Activity accepts a nonexclusive, non-sublicenseable, non-transferable and perpetual copyright license during the term of this Attachment A, solely for Ordering Activity's own internal business purposes, to execute one instance of the Licensed Product only on the Supported Computer(s) by employees of Ordering Activity (and/or consultants or contractors of Ordering Activity, provided such consultants or contractors have entered into confidentiality agreement with Ordering Activity containing terms no less restrictive than those set forth in Section 3, below, and provided that Ordering Activity remains responsible for any breach of this Attachment A by such consultants or contractors). The Licensed Product may not be used (i) on a service bureau or time-sharing basis; (ii) for consulting or managed security services provided to third parties; or (iii) in a for-hire engagement for revenue or other consideration on Supported Computer(s) or third party computers. Other than as explicitly set forth in this Attachment A, Ordering Activity shall not permit any other person or entity to access or use the Licensed Product. The computer program(s) are provided in and may be used in machine-readable object code form only.

2.2 Copies. The Ordering Activity may make one archival or back-up copy of the software licensed hereunder, provided that such copy is not used simultaneously or concurrently with the original software, and only if Contractor and Contractor's vendors' copyright and proprietary notices on the software are included on such copy.

2.3 Ordering Activity Modifications and Enhancements. Ordering Activity may not make any modifications or enhancements to the Licensed Product, create any derivative works of the Licensed Product, or merge or separate the Licensed Product or any component thereof without Contractor's prior written consent. Ordering Activity acknowledges the Licensed Product contains embedded software programs that Contractor distributes subject to a restricted license. Ordering Activity agrees not to use the embedded software programs except in conjunction with the Licensed Product. Ordering Activity agrees not to decompile, reverse compile, disassemble or otherwise reverse engineer the Licensed Product, or permit, help, or encourage others to do so, or to use the Licensed Software for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to the Contractor's commercial disadvantage. Ordering Activity agrees not to run (or publish the results of) any benchmark tests on the Licensed Product without first obtaining Contractor's approval.

2.4 Proper Use of Licensed Product. The Ordering Activity acknowledges that the continued integrity of the Licensed Product and Contractor's performance of its obligations described in this Attachment A are dependent upon the proper use and maintenance of the Licensed Product by Ordering Activity. Proper use and maintenance means that Ordering Activity will (i) install all Upgrades and Releases delivered to Ordering Activity hereunder, (ii) use the Licensed Product in accordance with the documentation supplied by Contractor through Guidance and the terms and conditions of this Attachment A, and (iii) follow Guidance's instructions for installing new Releases and Upgrades and for correcting and circumventing software bugs.

3. **OWNERSHIP AND PROPRIETARY RIGHTS:** Title to, ownership of, and all rights in patents, copyrights, trade secrets, trade dress, and all other proprietary rights in all Licensed Product does not transfer to Ordering Activity and shall remain in Contractor and/or Contractor's third party vendors and licensors. In addition, Contractor may furnish Ordering Activity with its (or its third party vendor's or licensor's) proprietary or confidential information ("Confidential Information") in connection with the provision of Licensed Product and support. Ordering Activity shall protect such Confidential Information of Contractor to the same degree it protects its own Confidential Information, but with no less than a reasonable degree of care. Licensed Product licensed hereunder shall also be considered Confidential Information of Contractor and, except as specifically permitted herein, shall not be disclosed to any third party.

4. TRAINING:

Training. Provided that Ordering Activity has purchased Guidance Training Passports ("Passports") for training classes related to the Licensed Product on an applicable purchase order, such classes are subject to availability and must be reserved in advance. Ordering Activity acknowledges that certain classes have prerequisites. Each Passport permits Ordering Activity to send one (1) designated representative to an unlimited number of Guidance training classes given for one year commencing on the Effective Date. Ordering Activity must designate the representative to Contractor either on the applicable purchase order or otherwise in

writing prior to reserving a course. No credit or refund will be given for any classes that are not taken and Ordering Activity shall be responsible for all travel and lodging expenses of its personnel to take such classes.

5. TERM OF LICENSES:

- 5.1 Term. The licenses granted hereunder commence on the Effective Date and remain in effect perpetually (or, if a shorter term is specified on any applicable quote/purchase order, for the length of such term). Upon expiration or termination of a license, Ordering Activity's right to use the Licensed Product licensed thereunder shall immediately end and Ordering Activity shall: (i) promptly return all Licensed Product (including any and all hardware dongles or other Guidance hardware on which the Licensed Product was delivered) and Guidance Confidential Information and all copies thereof to Guidance; (ii) erase all Licensed Product from the memory of its computer(s) and storage devices or render it non-readable; and (iii) upon Contractor through Guidance's request, certify in writing that Ordering Activity has satisfied its obligations hereunder.

6. SOFTWARE MAINTENANCE SERVICE ("SMS"):

- 6.1 General. If SMS is included or has been elected by Ordering Activity on an applicable purchase order, Contractor through Guidance will provide the services specified in this Section 5 and under Guidance's Standard Support Policy (Exhibit B herein), for the applicable Licensed Product. Guidance will evaluate problems submitted by Ordering Activity and consult with Ordering Activity to determine if it is a Defect.
- 6.2 Term. The initial SMS term shall commence on the Effective Date of the purchase order and remain in effect for the term purchased by Ordering Activity on any applicable purchase order. If one (1) year of SMS has been purchased, the SMS fee for that year is twenty percent (20%) of the license's single payment amount, and the term of SMS expires on the date one (1) year from the Effective Date. If two (2) years of SMS has been purchased, the SMS fee for that year is eighteen percent (18%) of the license's single payment amount, and the term of SMS expires on the date two (2) years from the Effective Date. If three (3) years of SMS have been purchased, the SMS fee for each year is sixteen percent (16%) of the license's single payment amount, payment for all three (3) years is due on the date specified in any applicable quote/purchase order, and the term of SMS expires on the date three (3) years from the Effective Date. Thereafter, subsequent SMS terms may be agreed upon by the parties, under the then-current Guidance SMS program, provided that: (a) Ordering Activity timely pays or has paid the applicable fees for any products or services from Contractor; (b) Contractor through Guidance continues to offer SMS to its customers generally for the Licensed Product, and (c) Ordering Activity remains in compliance with its obligations hereunder. Contractor through Guidance shall make commercially reasonable efforts to provide Ordering Activity with written notice of the fee for the next subsequent SMS term not less than sixty (60) days prior to the renewal date. Contractor may increase its SMS fees for subsequent SMS terms, but the amount of any such increase shall not exceed (i) if the immediately preceding SMS term was one (1) year, three percent (3%) of the fee applicable to the immediately preceding SMS term, (ii) if the immediately preceding SMS term was two (2) years, six percent (6%) of the fee applicable to the immediately preceding SMS term, or (iii) if the immediately preceding SMS term was three (3) years, nine percent (9%) of the fee applicable to the immediately preceding SMS term. Failure to make timely payment of any SMS fee shall not constitute a waiver by Contractor of such fee, the obligation to make such payment, or a valid termination of SMS. Contractor reserves the right to refuse to provide SMS while any accrued SMS fees or other fees remain unpaid. Each SMS term shall constitute a separate contract between the parties. Without prejudice to the foregoing, SMS shall automatically terminate on the date of termination of this Attachment A.
- 6.3 Non-Continuous Coverage; Lapse. In the event Ordering Activity does not maintain continuous SMS services, Contractor through Guidance may, in its discretion, refuse to provide any further SMS to Ordering Activity. Nothing herein shall require Contractor through Guidance to accept a future SMS renewal from Ordering Activity.
- 6.4 Definitions. For the purposes of this Attachment A, the following definitions shall apply: "Defect" means a material error in program logic or documentation attributable to Guidance which prevents the performance of a principal computing function as set forth in Guidance's published specifications for the Licensed Product. "Upgrade" means a revision of the Licensed Product with minor changes and/or Defect corrections (e.g. a change in the numbers to the right of the period X.XX). Upgrades generally occur between each Release of the Licensed Product. "Release" means a new version of the Licensed Product with new features and/or significant enhancements to existing Licensed Product products (e.g. a change to the numbers left of the period X.XX). "Documentation" means the user or system manuals and other published material delivered with the Licensed Product to Ordering Activity, which include the specifications. "Suite" is a collection of Modules. "Module" means a version of the Licensed Product designed to increase functionality for certain specific tasks or to serve the requirements of a subset of users, rather than being of general applicability and is considered outside the scope of this Licensed Product licensed under this Agreement.

6.5 Scope of Services.

- 6.5.1 Contractor through Guidance shall provide SMS in a manner that is consistent with its Standard Support Policy, as described herein under Exhibit B.

6.5.2 Ordering Activity will receive any available Upgrades so long as Ordering Activity has paid for SMS. Contractor through Guidance will provide instructions and/or revised user Documentation to assist the transition in installing Upgrades.

6.5.3 Ordering Activity will receive any available Releases so long as Ordering Activity has paid for SMS. However, new products, Suites and Modules are not included without charge and will be available only for an additional fee.

6.6 Service Limitations: Contractor through Guidance will support only the current Release of the Licensed Product and the immediately preceding Release. Guidance shall make reasonable efforts to accommodate support questions for all other Releases. All associated computer hardware and operating system software must be maintained at the latest Release and Upgrade levels supported by Guidance. For support issues that are not Defects or, when Guidance determines that any requested assistance has exceeded a reasonable level, Guidance may provide some reasonable assistance (determined in Guidance's sole discretion) to help optimize or enhance Ordering Activity's use of the Licensed Product.

7. **WARRANTY:** Contractor warrants, for period of one (1) year from the Effective Date ("Warranty Period"), that each item of Licensed Product shall be free from Defects. To the maximum extent permitted by applicable law, Ordering Activity's remedy and Contractor's obligation shall be to correct or circumvent any Defect reported to Contractor within the Warranty Period which causes and continues to cause a system-critical disruption of the Ordering Activity's business operations; provided, however, that: (i) Ordering Activity shall promptly notify Contractor of any Defects discovered and shall furnish to Contractor adequate supporting documentation and details to substantiate and to assist Contractor in the identification and detection of such Defect; and (ii) the Defect can be reproduced by Contractor on properly functioning equipment controlled by Contractor. In addition, with respect to certain hardware, to the extent the original equipment manufacturer offers its own hardware warranty, Contractor will pass-through such warranty to Ordering Activity.

8. **EXCLUSION OF WARRANTIES:** EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7, ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED PRODUCT IS WITHOUT INTERRUPTION OR DEFECT FREE, OR THAT THE LICENSED PRODUCT WILL MEET ORDERING ACTIVITY'S REQUIREMENTS. THE WARRANTY SET FORTH IN SECTION 6, ABOVE, IS CONTINGENT UPON (A) THE PROPER USE OF THE LICENSED PRODUCT IN ACCORDANCE WITH SECTION 2, AND (B) THE LICENSED PRODUCT NOT BEING SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, OR INTERFERENCE FROM APPLICATIONS, DERIVATIVE WORKS, OR CONFIGURATIONS PROVIDED BY THIRD PARTIES. THE WARRANTY SET FORTH IN SECTION 6, ABOVE, DOES NOT EXTEND TO DEFECTS IN THE LICENSED PRODUCT THAT RESULT FROM (A) ORDERING ACTIVITY'S FAILURE TO IMPLEMENT ALL UPGRADES AND RELEASES ISSUED BY CONTRACTOR DURING THE WARRANTY PERIOD, OR (B) TO THE EXTENT SUCH MODIFICATIONS WERE MADE BY ORDERING ACTIVITY TO ITS OPERATING ENVIRONMENT.

9. **U.S. GOVERNMENT END-USERS:** The Licensed Product and accompanying documentation are "Commercial Items" and "Commercial software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7203-3 (JUN 1995).

EXHIBIT A – ADDITIONAL SUPPLEMENTAL TERMS AND CONDITIONS

ENCASE® UNLIMITED COMPONENT LICENSES

1. Definition of Unlimited Component License. An EnCase Enterprise Unlimited Component License includes any EnCase Enterprise product shipping as of the date that such Unlimited Component License is purchased by a Ordering Activity, including an unlimited amount of the following components that can be deployed on Ordering Activity's Sites/Supported Computers (as defined in the Standard Terms):

▪ Enterprise Examiners	▪ Enterprise ProSuites	▪ Enterprise SAFEs
▪ Enterprise Snapshot	▪ Enterprise Concurrent Connections	▪ EnScripts that ship with the base purchase of EnCase Enterprise

However, a Unlimited Component License does NOT include:

▪ EnCase Forensic	▪ EnCase eDiscovery	▪ EnCase Portable
▪ EnCase Neutrino	▪ EnCase Cybersecurity	▪ training, services

▪ hardware	▪ third party products	▪ any other software or hardware that are not shipped with base purchases of EnCase Enterprise

2. Software Maintenance Services ("SMS"). For clarification, the EnCase Enterprise Unlimited Component License purchased by Ordering Activity represents an additional software license (and obligation to pay SMS for such Licensed Products) to those licenses already in place with Ordering Activity. For further clarification, SMS fees for the Licensed Products already licensed by Ordering Activity (i.e. not part of the Unlimited Component License) shall continue to apply in accordance with any agreement applicable to such License.

----- ENCASE® NODE-BASED LICENSES

1. Definition of Node. Ordering Activity acknowledges and agrees that pricing under this Attachment A is based on Ordering Activity's representation of the number of Ordering Activity's Supported Computers which can be both (i) connected to via its internal network, and (ii) investigated using the Licensed Product purchased hereunder ("Nodes").
2. Node Restriction. Ordering Activity represents and warrants that the number of Nodes referenced on the Contractor Quote delivered to Ordering Activity or any applicable purchase order delivered by Ordering Activity to Contractor represents all of the Nodes on Ordering Activity's computer networks, and all of the Nodes on the networks of Ordering Activity's subsidiaries, parent companies, and affiliates. Ordering Activity agrees that the license granted under the Attachment A is restricted for use on the number of Nodes identified on the Contractor Quote delivered to Ordering Activity. Ordering Activity agrees to provide Node Confirmation Statement, to Contractor within 15 days of each anniversary of the Effective Date of Licensed Product purchase.
3. Annual Node Update or Confirmation. Within fifteen (15) days following each one-year anniversary of the Effective Date ("Anniversary Date"), Ordering Activity shall provide Contractor with one of the following documents:
 - 3.1 Guidance Node Confirmation Statement, to confirm there is no change to the number of Nodes since the Effective Date or last Anniversary Date occurring after the Effective Date; or
 - 3.2 A Guidance Node Update Statement, to account for any increase in the number of Nodes that are capable of being investigated by the Licensed Software Products.

----- ENCASE® CYBERSECURITY LICENSES

Remediation. As a condition to the license granted to Ordering Activity to use EnCase Cybersecurity pursuant to the Standard Terms, Ordering Activity acknowledges the Licensed Products contain remediation functionalities ("Remediation"), and agrees that the following clause forms an integral part of this Attachment A:

Ordering Activity acknowledges and agrees that the purpose of Remediation is to correct, remediate, delete or wipe data that has been identified as unauthorized, against policy, corrupt or possibly infected by certain computer viruses, contaminants, or disabling devices including, but not limited to, any back door, "time bomb", drop dead device, encrypted imbedded key, node lock, time out or other function, codes, commands or instructions that may have the effect or be used to access, alter, delete, damage or disable software and/or hardware on Ordering Activity's computer network. It is possible and, indeed probable that utilizing Remediation will delete or destroy data that may otherwise be useful, valuable or important to Ordering Activity. Ordering Activity agrees that it is using Remediation at its own risk and that if it does not assume the risk of a loss of valuable electronic data, it should not use Remediation.

Notwithstanding anything to the contrary in the Attachment A, Contractor through Guidance hereby provides Remediation "AS IS" with all faults and without warranty or guarantee that it will be able to remediate any or all data problems, known or unknown. Ordering Activity hereby releases Contractor from any and all liability as to Ordering Activity or third party data, intellectual property, unauthorized content, privileged and/or confidential material that is destroyed in the process of using software that has Remediation activated.

----- EXTERNAL INVESTIGATION LICENSES

1. Use Restriction. Licensed Products licensed hereunder may be used by Ordering Activity, in its capacity as a Contractor authorized consultant and/or service provider, in accordance with these Standard Terms: (i) on external networks to analyze data collected from such networks in connection with criminal investigations, provided that all Licensed Products licensed hereunder

are removed from external computer networks upon completion of external data collection work on such networks and/or for such client(s).

ENCASE® EDISCOVERY LICENSES

1. Definitions. The following defined terms used in this Exhibit of Attachment A have the following meanings:

1.1 "Customer Data" means all electronic data or information submitted by Ordering Activity to the Service.

1.2 "Ingestion" means the process of receiving Customer Data submitted by Ordering Activity and loading such Customer Data into the Service.

1.3 "Order Forms" means any ordering document(s) (i.e. purchase orders or other similar documentation) setting forth the terms for purchasing Access to the Service entered into between Ordering Activity and Contractor.

1.4 "Service" means the online, Web-based applications and platform provided by Contractor through Guidance via <http://www.CaseCentral.com> (the "Website") and/or other designated by Guidance to Ordering Activity, that are ordered by Ordering Activity under an Order Form, including associated offline components but excluding third party applications.

1.5 "Storage" means the data storage space on Guidance (or Guidance affiliate/partner) servers allocated to Ordering Activity for the storage of Customer Data uploaded to the Service by Users.

1.6 "Term" is defined in Section 3.1 below.

1.7 "Users" means individuals who are authorized by Ordering Activity to Access the Service and have been supplied user identifications and passwords for the Service. Users may include but are not limited to employees, consultants, contractors and agents of Ordering Activity, or third parties which Ordering Activity transacts business.

2. Service

2.1 License to Access; Restrictions. Pursuant to this Exhibit of Attachment A and an applicable Order Form, Contractor through Guidance shall make the Service available to Ordering Activity for Users to access and use ("Access") the Service during the Term, for Ordering Activity's internal business purposes only, via the Internet. Contractor through Guidance will host the Service and reserves the right to make changes and updates to the functionality and/or documentation of the Service from time to time. Ordering Activity may Access the Service until the Term expires or is terminated as provided herein. Ordering Activity agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Guidance regarding future functionality or features. The method and means of providing the Service, and Ordering Activity with Access to the Service, shall be under the exclusive control, management, and supervision of Guidance, giving due consideration to the requests of Ordering Activity. Ordering Activity may not alter, resell or sublicense the Service or provide it as a service bureau. Ordering Activity agrees not to reverse engineer the Service or its software or other technology. Ordering Activity will not use or access the Service to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics of the Service, (iii) make derivative works based upon the Service or the Web Site's content, or (iv) copy any features, functions or graphics of the Service or Web Site. Ordering Activity will not "frame" or "mirror" the Service.

2.2 User Accounts. The number of Users authorized to Access the Service shall be limited to the number of Users set forth on any applicable Order Form. User subscriptions are for designated Users and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing Access. Ordering Activity is responsible for all User actions in violation of these terms and any activities that occur under Ordering Activity's User accounts. Ordering Activity is responsible for maintaining the security and confidentiality of all User usernames and passwords. Ordering Activity agrees to notify Guidance immediately of any unauthorized use of any Service username or password or account or any other known or suspected breach of the Service's or Web Site's security.

2.3 Terms of Use; Compliance with Law. Guidance reserves the right to remove (but is not obligated to do so), and Ordering Activity and Users may not use the Service to store or transmit, any Customer Data that is infringing, libelous, or otherwise unlawful or tortious material, or any material in violation of third-party privacy rights. Ordering Activity and Users will comply with all applicable laws regarding Customer Data and use of the Service, including laws involving private data or data subject to export control.

2.4 Ownership. These terms grant no ownership rights to Ordering Activity. No license is granted to Ordering Activity except as to Access of the Service as expressly stated herein. The Guidance name, any Guidance logos, and the product names associated with the Service are trademarks of Guidance or third parties, and they may not be used without Guidance's prior written consent. Use, resale or exploitation of the Service and/or the Website except as expressly permitted in these Terms is strictly prohibited. Guidance shall have a royalty-free, worldwide, transferable,

sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity and/or Users, relating to the operation of the Service. Subject to the limited rights expressly granted hereunder, Guidance reserves all rights, title and interest in and to the Service and Website, including all related intellectual property rights. No rights are granted to Ordering Activity or Users hereunder other than as expressly set forth herein.

3. Term; Termination.

3.1 Term. Unless terminated in accordance with the terms of the Schedule Contract, the Service shall be provided by Contractor through Guidance commencing on the Effective Date and continuing for twelve (12) months thereafter (or any other period identified on an applicable Order Form)(the "Initial Term").

3.2 Termination.

3.3 Payments Upon Termination. Upon the expiration or termination of the Term for any reason, Ordering Activity shall pay to Contractor all undisputed amounts due and payable hereunder. Upon any termination for cause by Ordering Activity, Contractor shall refund Contractor any prepaid Fees covering the remainder of the Term of all subscriptions after the effective date of termination.

3.4 Return of Customer Data. In the event that the Term is terminated (for any reason) or expires, Contractor through Guidance will, within thirty (30) days of a Ordering Activity's request, make available one backup of the Customer Data in Guidance's standard format. Ordering Activity agrees and acknowledges that Contractor through Guidance has no obligation to retain and may delete all Customer Data that remains in Guidance's possession or control more than 60 days after termination of the Term.

4. Service Level Agreement, Force Majeure.

4.1 SLA. During the Term, Contractor through Guidance shall provide the Service for not less than 99.0% of time during any particular calendar month subject to causes beyond Guidance's reasonable control and scheduled maintenance. Guidance shall provide prompt maintenance and support seven days per week during regular business hours (9 AM to 9 PM Eastern Time), or within three (3) hours after notification during all other times and on U.S. holidays.

5. Customer Data; Data Security and Backup.

5.1 All Customer Data submitted by Ordering Activity to Contractor through Guidance, whether posted by Ordering Activity or by Users, must be submitted in a format satisfactory to Guidance and will remain the sole property of Customer or such Users to the full extent provided by law.

5.2 Ordering Activity will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. Contractor through Guidance will not use the Customer Data for any purpose other than to provide the Service to Customer and for anonymous statistical reporting purposes. Guidance may aggregate anonymous statistical data regarding use and functioning of its system by its various Users. Such aggregated statistical data will be the sole property of Guidance.

5.3 Contractor through Guidance will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use. Guidance shall backup all Customer Data at a secure facility operated in accordance with generally accepted industry standards.

6. Disclaimers; Warranties and Limitations

6.1 Warranties. Contractor warrants that the Service shall perform materially in accordance with these terms and the functionality of the Service will not be materially decreased during the Term. For any breach of either such warranty, Ordering Activity's remedy shall be as provided in the "Payments Upon Termination" section above.

6.2 THE WARRANTIES EXPRESSLY STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY

CONTRACTOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICE AND WEB SITE ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. ORDERING ACTIVITY ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES. CONTRACTOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. CONTRACTOR IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY ORDERING ACTIVITY OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

EXHIBIT B - STANDARD SUPPORT POLICY FOR SOFTWARE MAINTENANCE SERVICES ("SMS")

1. Definitions

"Defect" means a material error in program logic or documentation attributable to Guidance which prevents the performance of a principle computing function as set forth in Guidance's published specifications for the Software. "Upgrade" means a revision of the Software with minor changes and/or Defect corrections (e.g. a change in the numbers to the right of the period X.XX). Upgrades generally occur between each Release of the Software. "Release" means a new version of the Software with new features and/or significant enhancements to existing Software products (e.g. a change to the numbers left of the period X.XX). "Documentation" means the user or system manuals and other published material delivered with the Software to Ordering Activity, which include the specifications. "Module" means a version of the Software designed to increase functionality for certain specific tasks or to serve the requirements of a subset of users, rather than being of general applicability and is considered outside the scope of this Software licensed under this Agreement.

2. Software Included in SMS

Ordering Activity will receive any available Upgrades so long as Ordering Activity has paid for SMS. Contractor through Guidance will provide instructions and/or revised user Documentation to assist the transition in installing Upgrades.

Ordering Activity will receive any available Releases so long as Ordering Activity has paid for SMS. However, new products or new Modules are not included.

3. Service Included in SMS

Contractor through Guidance will remedy Defects by using reasonable efforts to (i) provide a bug fix, patch or workaround procedure, and/or (ii) incorporate a permanent Defect correction in the next Upgrade or Release of the Software. If the problem is not a Defect, (a) Guidance will notify Ordering Activity as soon as possible and if determination of the problem cannot be made via phone, email or remote support; (b) Guidance may, in its sole discretion, provide a remedy by the same means as specified in Sections (i) and (ii) above.

4. SMS Service Limitations

Contractor through Guidance will support only the current Release of the Software and the immediately preceding Release. All associated computer hardware and operating system software must be maintained at the latest Release and Upgrade level for proper functioning. Guidance may provide some reasonable assistance (determined in Guidance's sole discretion and subject to Ordering Activity's acceptance) to help optimize or enhance Ordering Activity's use of the Software.

5. Methods of Providing SMS and Response Times

Telephone, Web and Email Support

The Initial Acknowledgement represents the maximum length of time allowed for the Support Consultants to acknowledge receipt of your support request, and route the request to the appropriate person for resolution. After Initial Acknowledgment of a Ordering Activity's support request, Contractor through Guidance will make commercially reasonable attempts to remedy any reported Defects.

Web and E-mail Acknowledgement will include:

- Support Consultant's name
- Incident ID number
- Status of the problem
- Indication of when you will receive a solution or update

The following table represents the maximum length of time allowed for initial acknowledgement to occur:

Communication Type	Initial Acknowledgement
Telephone	90% of Phone Calls during Business Hours will receive immediate voice contact with Support Consultants
Voice-mail	Ordering Activities who leave a voicemail for support professionals will receive a return call within (2) Business Hours
Web	Assigned to Support Consultant Within 2 Hours
E-mail	Assigned to Support Consultant Within 2 Hours

For purposes of this SMS Policy only, "Business Hours" shall mean the following Pacific Standard/Daylight Times: 24 hours a day, Sunday 7:00 p.m. through Friday 6:00 p.m. excluding national holidays in the United States and United Kingdom.

On-Line Support

Guidance's On-Line Support Center provides the following capabilities:

Access via Web to Solutions Database

Receive Support e-Bulletins via E-mail Critical Problem Alerts via E-mail Report Product Defects via Web Submit Suggestions via the Web Access Product Documentation On-Line Patches & Upgrades Incident Submission via the Web Incident Submission via E-mail

Guidance software products are managed according to a product life-cycle management program with planned and scheduled updates. Guidance SMS subscribers receive these software Updates and Releases at no charge and will receive notice of such improvements.

Emergency On-site Support

In the case of a critical situation, where an unresolved issue is having extreme impact on your business, emergency on-site assistance is available within 48 hours. You can specifically request on-site assistance, or Contractor through Guidance may determine the need as part of the escalation management process.

Escalation Procedure

If Ordering Activity reasonably believes that the reporting of a Defect has not received the appropriate response from Contractor through Guidance (as stated within this policy), the Ordering Activity may escalate the matter. The following Guidance personnel will be made aware of the matter and respond personally to Ordering Activity, in the following time frame:

- 48 Hours After Reporting Defect: GSI Technical Support Manager
- 96 Hours After Reporting Defect: GSI Vice President, Technical Support

120 Hours After Reporting Defect: GSI Vice President, Worldwide Sales

Gupta Technologies
1420 Rocky Ridge Drive, Suite 380
Roseville, CA 95661

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

GUPTA TECHNOLOGIES

GUPTA TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

- a) "Application Solution" defined as the Application Solution developed by Ordering Activity with the Software.
- b) "Central Processing Unit (CPU)" defined as a computation hardware unit such as a microprocessor that serves as the main arithmetic and logic unit of the computer.
- c) "Developer Seat" defined as a single computer utilized by a single person at any one time to perform the tasks associated with the development of Application Solutions.
- d) "Deployment Software" defined as the Deployment Software specified in Exhibit A and licensed by payment of the proper License Fee.
- e) "Development Software" defined as the Development Software specified in Exhibit A and licensed by payment of the proper License Fee.
- f) "Services" defined as Unify provided Services for Support and Maintenance, Consulting and Training services.
- g) "Software" defined as the Development and Deployment Software, including User Documentation as defined in Exhibit A. Unify reserves the right to discontinue Software at its sole discretion. The Software is protected by applicable intellectual property laws including copyright laws and international treaties.
- h) "User Documentation" defined as the Unify user manual(s) and other materials on the proper installation and use of the Software, which is normally distributed with the Software.

2. LICENSE GRANT AND LIMITATIONS

2.1 License Grant. Pursuant to this Attachment A, Ordering Activity agrees to properly license and pay the appropriate License Fee for the Software (as set forth on Exhibit A and or the Contractor quote), and Contractor agrees to grant Ordering Activity a non-exclusive, non-transferable, non-assignable license to use the Development Software to design, develop, test and maintain the Application Solutions, and to use the Deployment Software to deploy the Application Solutions into a production environment subject to the conditions set forth in this Attachment A.

2.2 Limitations. All rights not expressly granted herein are reserved by Contractor and/or its licensors. Without limiting the generality of the preceding sentence, Ordering Activity agrees: (i) not to modify, port, translate, localize, or create derivative works of the Software; (ii) not to disassemble, decompile, reverse engineer or otherwise reduce the Software to human perceptible form, except as permitted by the 1991 EC Directive; (iii) not to remove, or allow to be removed, any Contractor or its Licensors copyright, trade secret, or other proprietary rights notice from any Software; (iv) not to make copies of the Software except for normal backup purposes; (v) not to transfer, assign, (except as permitted by Section 9.2) re-use or re-license the Software licenses to any third party without the prior written consent of Contractor; and (vi) not to use the Software to develop an Application Solution for re-sale or usage as an Application Service Provider or any other "access fee basis".

3. GUPTA TECHNOLOGIES SERVICES

3.1 Ordering Activity will purchase Support and Maintenance Services for the first year from Contractor under the terms and conditions set forth in Exhibit B. All items (upgrades and updates) delivered by Contractor through Gupta Technologies shall be deemed to become a part of the applicable Software licensed hereunder and shall be subject to all terms and conditions of this Attachment A.

3.2 Ordering Activity may obtain Consulting Services from Contractor through Gupta Technologies under the terms and conditions as defined in Exhibit C. Ordering Activity may also participate in Gupta Technologies's standard training programs by contacting info@GuptaTechnologies.com.

4. TITLE

4.1 Title, ownership and all intellectual property rights in and to the Software belong exclusively to Gupta Technologies and its licensors (which licensors shall have third party beneficiary rights to the extent permitted by applicable law). This Attachment A grants Ordering Activity no additional express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Software or take any action that would cause the Software to be placed in the public domain.

5. LIMITED WARRANTIES

5.1 Contractor warrants that (i) it has full right to enter into and perform this Attachment A; (ii) to the best of Contractor's knowledge, the Software does not violate any intellectual property rights of a third party under applicable patent or copyright laws; (iii) during the first sixty (60) days of normal use from the date Ordering Activity receives the Software from Contractor, the media will be free of defects in materials and workmanship and the Software will perform substantially in accordance with the Documentation or Contractor will replace the defective media without charge if returned to Contractor during this period; and (iv) Contractor warrants that it will perform the work associated with the Services in accordance with professional standards for similar work.

5.2 EXCEPT FOR THESE EXPRESS LIMITED WARRANTIES, ORDERING ACTIVITY ACCEPTS THE SOFTWARE AND SERVICES "AS IS", WITH NO OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, OR IMPLIED BY STATUTE, COMMON LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor has no control over the conditions under which Ordering Activity uses the Software and does not and cannot warrant the results obtained by such use. Additionally, Contractor makes no warranties that the Software will satisfy Ordering Activity's data processing needs or function without interruption, errors or defects. Contractor makes no warranties regarding the applications developed with the Software or regarding Software which has been modified or altered by any party other than Contractor or to any problems caused by computer hardware or operating systems. The parties further agree that Contractor shall not be liable to Ordering Activity for any delay or failure of Contractor to perform its obligations hereunder if such delay or failure arises from any cause beyond the reasonable control of Contractor, such as acts of God, delays or non-responsiveness of Ordering Activity, or the temporary unavailability of qualified personnel.

EXHIBIT A - Products licensed by this EULA

1. DEFINITIONS

- a) "Developer Seat-based" is defined as requiring the Ordering Activity to purchase a license for each computer where the Software is installed and used by a Developer to develop the Application Solutions.
- b) "CPU-based" is defined as requiring the Ordering Activity to purchase a license equal to or greater than the number of CPUs in the computer(s) where the deployed Application Solution, including the Software, is installed.
- c) "User- based" is defined as any machine or device that executes, utilizes or displays the Software. User would include a server, client, or X-terminal as a hardware device or software emulator, batch processes, interactive users, and connecting devices.

2. SOFTWARE LICENSED:

Gupta Technologies Vision AppBuilder	1 User-
Gupta Technologies Vision AppServer Desktop	1 User
Gupta Technologies Vision AppServer Enterprise	_ CPUs

EXHIBIT B - Software Support & Maintenance Services Terms and Conditions

Contractor through Gupta Technologies is pleased to provide the Annual Software Support and Maintenance Services (the "Support Services") to Ordering Activity. Gupta Technologies has developed multiple Support Service offerings to meet the individual needs of each of our valued customers. Gupta Technologies agrees to provide the Support Services pursuant to the Attachment A terms and conditions and the additional Support Services terms and conditions below:

1. Annual Software Support and Maintenance Service Programs.

- 1.1 Ordering Activity is required to purchase the first year of Support Services for the Software purchased.
- 1.2 All updates, patches, fixes and other error corrections pertaining to the Software provided to Ordering Activity shall become a part of the Gupta Technologies Software, which is licensed under the terms and conditions of the Attachment A.

EXHIBIT C - Consulting Services Terms and Conditions

1. Consulting Agreement Terms and Conditions

1.1 Pursuant to the Attachment A terms and conditions and the additional Consulting Services terms and conditions as follows, Contractor through Gupta Technologies agrees to provide, upon Ordering Activity's request, the consulting services ("Assignments") described on separately executed assignment orders (the "Assignment Orders").

2. Assignment(s) Scope and Changes

2.1 Each Assignment Order shall define a specific Assignment authorized by Ordering Activity, the Assignment schedule or term, the applicable rates and charges, and any other specific terms and conditions as required to complete the Assignment. Each Assignment Order shall be governed by the terms and conditions of this Exhibit C and only the terms or conditions set forth herein.

2.2 Contractor through Gupta Technologies reserves the right to select and assign personnel to each Assignment based on the skill classifications required and available personnel resources. Should an employee be unable to perform the required services because of reasons beyond Gupta Technologies's reasonable control, Gupta Technologies will replace such person within a reasonable period of time. Gupta Technologies shall have the right to use third parties in performance of its obligations and services hereunder and for purposes of this Consulting Agreement all references to Gupta Technologies or its employees shall be deemed to include such third parties. Gupta Technologies shall insure that all such third parties shall execute confidentiality agreements as may be necessary to comply with Gupta Technologies's obligations or confidentiality under any confidentiality agreements between the parties.

3. Ownership

3.1 All development tools, database management programs, programming languages, or programs provided by Contractor through Gupta Technologies which contain any of Gupta Technologies's proprietary program code or related documentation (the "Gupta Technologies Software") are not Works Made for Hire and shall belong exclusively to Gupta Technologies and no ownership rights thereto shall accrue in any manner to Ordering Activity. This Attachment A grants no express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Gupta Technologies Software or take any action that would cause the Gupta Technologies Software to be placed in the public domain. Ordering Activity shall not disassemble, decompile, reverse engineer or otherwise reduce the Gupta Technologies Software to human perceptible form.

3.2 Except as provided in 3.1 above, Contractor through **Gupta Technologies** agrees that all work undertaken by **Gupta Technologies** under this Attachment A or any Assignment Order (in whole or in part, either alone or jointly with others) shall be the sole property of Ordering Activity. UOrdering Activity shall be the sole owner of all rights in connection therewith. Furthermore, except as provided in section 3.1 above, all works of authorship will be "works made for hire" to the extent allowed by law. Ordering Activity acknowledges that during the term of this Attachment A **Gupta Technologies** will be acting as a consultant to other entities and, providing **Gupta Technologies** does not violate these terms and conditions, Ordering Activity shall have no rights in any such work provided by **Gupta Technologies** to such entities.

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

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

- dd) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- ee) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- ff) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- gg) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- hh) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- ii) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- jj) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- kk) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- ll) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- mm) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- nn) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- oo) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- pp) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Haivision Network Video

Haivision Network Video LICENSE, WARRANTY AND SUPPORT TERMS

1 DEFINITIONS

- 1.1. **Entitlement.** The collective set of applicable documents (e.g., warranty, support and maintenance documents, data sheets, etc.) authorized by Haivision Systems Inc. or its affiliate Haivision (collectively, "Haivision") evidencing your obligation to pay associated fees (if any) for the license, associated Services, and the authorized scope of use of Product under the applicable Ordering Document.
- 1.2. **License Fee.** License Fee shall mean the consideration paid to Haivision for use of the Product. The License Fee is part or all of the price paid for the relevant Product in applicable Ordering Document.
- 1.3. **Product.** Product shall mean the executable version of Haivision's computer software, program or code, in object code format (specifically excluding source code), together with any related material including, but not limited to the hardware, Reference Manuals or database schemas provided for use in connection with the Product and including, without limitation, all Upgrades through the date of installation.
- 1.4. **Reference Manuals.** Reference Manuals shall mean the most current version of the documentation for use in connection with the Product provided by Haivision to You.
- 1.5. **Third-Party Content.** Services or materials, which are not proprietary to Haivision or may not be part of the materials of the company, entity or individual using the Product.
- 1.6. **Updates.** Updates shall mean any periodic software releases, additions, fixes, and enhancements thereto, release notes for the Product and related Reference Manuals, (other than those defined elsewhere in this section as Upgrades) which have no value apart from their operation as part of the Product and which add minor new functions to the Product, but none so significant as to warrant classification as an Upgrade, which may be provided by Haivision to fix critical or non-critical problems in the Product on a scheduled, general release basis. Updates to the Product ("Version") are denoted by number changes to the right of the decimal point for a version and revision number (for example, going from 2.0.0 to 2.1.0).
- 1.7. **Upgrades.** Upgrades shall mean any modification to the Product made by Haivision, which are so significant, in Haivision's sole discretion, as to warrant their exclusion under the current license grant for the Product. Upgrades of Product are denoted by number changes to the left of the decimal point for a release number (for example, going from 2.0 to 3.0).
- 1.8. **You (or Your).** The ordering activity specified in the Entitlement, or for evaluation purposes, the entity performing the evaluation.

2 RIGHTS AND RESTRICTIONS

- 2.1. **License to Use.** Subject to the terms and conditions set forth herein and subject to the terms of the applicable Ordering Document, Haivision hereby grants to You a non-exclusive, personal, limited and non-transferable right and license to use the Product in accordance with the terms of this Agreement. This license is granted to You and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours without Haivision's specific prior written consent. This license is for the limited use of the Product by You for the purpose of creating, managing, distributing and viewing IP Video assets. This license does not grant any license for content whatsoever. All rights not expressly granted to You by this Agreement are reserved by Haivision.

2.2. Restrictions.

- (a) **Reproduction.** You shall not copy, modify, distribute, use or allow access to any of the Product, except as explicitly permitted under this Agreement and only in the quantities designated in the Entitlement. However, You have the right to make copies of the Product solely for archival purposes, but only in quantities necessary and typical for your Organization. You shall not modify, adapt, translate, export, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, hardware designs or other proprietary information from the Product or any internal data files generated by the Product, or use the Product embedded in any third party hardware or software. You shall also not use the Product in an attempt to, or in conjunction with, any device, program or service designed to circumvent technological measures employed to control access to, or the rights in other work protected by copyright laws. You shall not remove, modify, replace or obscure Haivision's copyright and patent notices, trademarks or other proprietary rights notices affixed to or contained within any Product. No right is granted hereunder for any third party who obtains access to any Product through You to use the Product to perform services for third parties. Most sublicensing arrangements are prohibited under this Agreement.
- (b) **Ownership.** The Product is conditionally licensed and not sold. As between the parties, Haivision and/or its licensors owns and shall retain all right, title and interest in and to all of the Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein, and nothing in this Agreement shall be deemed to transfer to You any ownership or title to the Product. You agree that you will not remove, alter or otherwise obscure any proprietary rights notices appearing in the Product. All Haivision technical data and computer software is commercial in nature and developed solely at private expense.

3 RESERVED.

4 REPRESENTATIONS, DISCLAIMER

- 4.1. **Limited Warranty.** Haivision warrants that: (i) the Product will operate substantially in accordance with the Reference Manuals provided and (ii) any media on which the Product is provided will be free of material damage and defects in materials and

workmanship under normal use for a term of ninety (90) days (the "Warranty Period") after its delivery date. As Your sole and exclusive remedy for any breach of this warranty, Haivision will use its commercially reasonable efforts to correct any failure of the Product to operate substantially in accordance with the Reference Manuals which is not the result of any improper or unauthorized operation of the Product and that is timely reported by You to Haivision in writing within the Warranty Period, provided that in lieu of initiating commercially reasonable efforts to correct any such breach, Haivision may, in its absolute discretion, either: (i) replace the Product with other software or technology which substantially conforms to the Reference Manuals or (ii) refund to You a portion of the fee paid for the relevant Product, whereupon this Agreement shall terminate. This warranty shall immediately terminate if You or any third party makes or attempts to make any modification of any kind whatsoever to the Product, engages in any improper or unauthorized operation of the Product, including uses prohibited by the Entitlement or installs or uses the Product on or in connection with any hardware or software not specified in the Entitlement or product data sheets.

4.2. **Warranty Disclaimers.** THE EXPRESS WARRANTIES SET FORTH IN SECTION 4.1 ABOVE IN RESPECT TO THE PRODUCT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING THE PRODUCT, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS (ALL OF WHICH ARE DISCLAIMED). HAIVISION DOES NOT WARRANT THAT ANY OF THE PRODUCT(S) WILL MEET ALL OF YOUR NEEDS OR REQUIREMENTS, OR THAT THE USE OF ANY OF THE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE DETECTED OR CORRECTED.

4.3. Reserved.

5 RESERVED.

6 OTHER PROVISIONS

6.1. **Export and Other Restrictions.** This Agreement, and all Your rights and Your obligations under this Agreement, are subject to all applicable U.S. Government laws and regulations relating to exports including, but not limited to, the U.S. Department of Commerce Export Administration Act and its associated Regulations and all administrative acts of the U.S. Government thereunder. In the event the Product or the Hardware is exported from the United States or re-exported from a foreign destination, You shall ensure that the distribution and export/re-export of the Product or the Hardware is in compliance with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Act and its associated Regulations. You agree that neither you nor any of your Affiliates will export/re-export any Product, any hardware on which the Product is loaded or embedded, technical data, process, or service, directly or indirectly, to any country for which the United States government (or any agency thereof) requires an export license, other governmental approval, or letter of assurance, without first obtaining such license, approval or letter.

6.2. **Content.** Your data and/or your use of the Product may not: (i) interfere in any manner with the functionality or proper working of the Product; (ii) stream any material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permissions from the rightful owner to post the material; (iii) constitute, promote, facilitate or permit any illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive or otherwise malicious or harmful to any person or entity; (iv) distribute, share or facilitate unauthorized data, malware, viruses, Trojan horses, spyware, worms or other malicious or harmful distributions; or (v) otherwise violate, misappropriate or infringe the intellectual property, privacy, publicity, contractual or other proprietary rights of any third party.

6.3. **Consent to Use Data.** You agree that Haivision may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to the Product. Haivision may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.

6.4. Reserved.

6.5. Reserved.

6.6. Reserved.

6.7. **Third Party Content.** Haivision is not responsible for examining or evaluating the data, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of any Third Party Content. Haivision does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any Third Party content.

6.8. Reserved.

6.9. Reserved.

6.10. Reserved.

6.11. Reserved.

6.12. Reserved.

6.13. Reserved.

6.14. Reserved.

6.15. **US Government Rights.** Some Products are commercial computer software, as such, term is defined in 48 C.F.R. §2.101. Accordingly, if You, as the Licensee, is the US Government or any contractor therefor, You shall receive only those rights with respect to the Product and Reference Materials as are granted to all other end users under license, in accordance with:

(a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors;
or

(b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

6.16. Reserved.

Hewlett Packard Enterprises
13600 EDS Drive
Herndon, VA

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

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

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
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- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
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- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
Hewlett Packard Enterprises**

Hewlett Packard Enterprises LICENSE, WARRANTY AND SUPPORT TERMS

HPE CUSTOMER PASS THROUGH TERMS

HPE's obligations with respect to products or services supplied by HPE and procured by an end-user customer (hereinafter "Customer") from authorized HPE Business Partners are limited to the terms and conditions in these HPE CUSTOMER PASS THROUGH TERMS ("Terms") and the specific Supporting Material included with the HPE supplied products and services. HPE is not responsible for the acts or omissions of HPE Business Partners, for any obligations undertaken by them or representations that they may make, or for any other products or services that they supply to Customer.

1. **Orders. "Order"** means the accepted order issued by Customer under the GSA Schedule Contract, including any HPEbranded supporting material which is identified as incorporated either by attachment or reference ("**Supporting Material**"). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements and statements of work (SOWs), HPE Care Pack Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website, provided that in the event of inconsistency between the terms of any Supporting Material and the terms of the GSA Schedule Contract (including HPE's GSA Addendum), the latter shall control to the extent of the inconsistency.
2. **Title.** When HPE delivers to Customer directly, risk of loss or damage and title for hardware products will pass upon delivery to Customer or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received.
3. **Installation.** If HPE is providing installation with the product purchase, HPE's site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.
4. **Support Services.** HPE's support services will be described in the applicable Supporting Material, which will cover the description of HPE's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
5. **Software-as-a-Service.** HPE's online software-as-a-service solution that HPE provides to Customer, including support, and related professional services will be described in the Supporting Material ("**SaaS**"). The SaaS term is specified in the Supporting Material or HPE quotation (the "**SaaS Term**"). If Customer previously purchased a perpetual license to the on-premise version of the HPE branded software product ("**HPE Software**"), the price of SaaS shall reflect such purchase and such pre-existing license shall be deemed to be used in relation to SaaS. During the SaaS Term, Customer may not use such HPE Software installed on Customer infrastructure except in connection with receipt of SaaS.
6. **SaaS Rescheduling.** Customer has the one-time right to reschedule the Order start date without charge (for a date that is no more than three (3) months after the originally scheduled start date) upon no less than three (3) business days' written notice prior to the date that delivery is scheduled to begin.
7. **Professional Services.** - Reserved
8. **Professional Services Acceptance**- Reserved.
9. **Eligibility.** HPE's service, support and warranty commitments do not cover claims resulting from:

1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
 3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
 4. malware (e.g. virus, worm, etc.) not introduced by HPE; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.
- 10. Dependencies.** HPE's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
- 11. Change Orders.** Reserved
- 12. Product Performance.** All HPE-branded hardware products are covered by HPE's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.
- 13. Software Performance.** HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.
- 14. Services Performance.** Services are performed using generally recognized commercial practices and standards.
- 15. SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.
- 16. Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
- 17. SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.
- 18. Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
- 19. Product Warranty Claims.** When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.
- 20. Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.
- 21. Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under these Terms. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered support services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverable internally.

- 22. Intellectual Property Rights Infringement.** For Federal government customers, the Government will control litigation or settlement of any patent infringement claims arising out of the performance of this contract and brought against the government notwithstanding anything to the contrary in a "Patent Indemnity" provision of this contract or other related transaction document. HPE reserves the right to intervene in the proceedings at its own expense through counsel of its choice.
- 23. License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material.
- 24. Updates.** Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.
- 25. License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any software licensed to Customer under these Terms unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.
- 26. License Term and Termination.** Unless otherwise specified, any license granted is perpetual in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.
- 27. License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE's prior written authorization, and payment to HPE of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
- 28. License Compliance.** HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.
- 29. Confidentiality.** Information exchanged under these Terms will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under these Terms, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
- 30. Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered. **For SaaS purposes, Customer** acknowledges that HPE may route, process or store, and could access business contact information and the data that Customer enters into HPE's SaaS infrastructure, from countries other than the country from which Customer entered such data.
- 31. US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE's standard commercial license.

- 32. Global Trade Compliance.** Products and services provided under these Terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under these Terms to the extent required by laws applicable to either party.
- 33. Limitation of Liability.** Reserved
- 34. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 35. General.** These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by HPE and Customer.

Aruba Networks, Inc. End-User Software License Agreement ("Agreement")

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA NETWORKS, INC. AND ITS AFFILIATES OR AIRWAVE WIRELESS (COLLECTIVELY, "ARUBA"). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. YOUR RIGHTS UNDER THIS AGREEMENT BEGIN WHEN YOU RECEIVE YOUR LICENSE KEY FROM ARUBA, AND NOT ON THE DATE THAT YOU INSTALL THE SOFTWARE. IT IS UP TO YOU TO INSTALL THE SOFTWARE PROMPTLY UPON RECEIPT OF A LICENSE KEY FROM ARUBA. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA (OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.

1. LICENSE

Subject to your full compliance with all the terms and restrictions set forth in this agreement ("Agreement"), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Aruba software programs ("Programs"). Any third party software programs obtained through the use of the Programs are exclusively subject to the terms and conditions accompanying those third party programs ("Third Party Programs"). The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs ("Controls"). Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Aruba responsible for such usage of such Controls.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, "Support Enhancements"). Support Enhancements will be considered Programs for purposes of this Agreement, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, knowhow, techniques, processes, ideas, algorithms, and software design and architecture ("Proprietary Information"). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use

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(except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba's hardware products or an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Aruba. You may physically

transfer the base operating system Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

D. You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba's legal obligations and to protect Aruba's legal rights. Aruba will not use any information gathered in this manner for any other purpose.

4. LIMITED WARRANTY AND DISCLAIMER

Aruba warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable, will replace the media without charge to you. Aruba shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND ARUBA EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS. ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. LIMITATION OF LIABILITY

YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS

BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TERM

This Agreement is effective until terminated, and shall automatically apply to any future upgrades or updates to any Programs or any additional features of any Programs, except as otherwise specified by Aruba. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically, with respect to any Program or feature of any Program, at the end of the applicable term of any limited-term license purchased by you, or if you fail to comply with any term or condition of this Agreement, including any failure to pay any associated license and related fees due by you in full and any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.

7. U.S. GOVERNMENT RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to "restricted rights" as that term is defined in Defense Federal Acquisition Regulations ("DFAR") in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered "restricted computer software" and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations ("FAR") in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.



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8. GENERAL

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if made by nonpreprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

If you are located in the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement must be resolved in Hong Kong by the Hong Kong

International Arbitration Centre pursuant to its rules of arbitration then in effect, and the arbitration shall be conducted in English. If you are located outside of the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

IMPORTANT

HireVue, Inc.
10876 S. River Front Parkway, Suite 500
South Jordan, Utah 84095

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

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

- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
10. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
HireVue, Inc.**

HireVue, Inc. LICENSE, WARRANTY AND SUPPORT TERMS

MASTER SERVICE AGREEMENT

HireVue, Inc. ("HireVue") a Delaware corporation located at 10876 S. River Front Parkway, Suite 600, South Jordan, UT 84095, offers Services (defined below) through its proprietary Platform (defined below). HireVue hereby agrees to provide its Services to the Buyer identified on a Service Order (defined below) executed in connection with this Master Service Agreement, who desires to subscribe to and use HireVue Services in accordance with the terms and conditions set forth in this Master Service Agreement ("Agreement"). Buyer and HireVue are referred to herein each individually as a "Party" and collectively as the "Parties".

1. Definitions.

- 1.1. "Authorized Users" means those individuals designated by or invited by Buyer, in accordance with this agreement, to use the Services.
- 1.2. "Buyer Content" means all content created by or provided by Buyer or its Authorized Users and submitted to the Platform.
- 1.3. "Documentation" shall mean the descriptions of the HireVue Services set forth at <http://hirevue.com/product-documentation>.
- 1.4. "End User" means a user of the Platform that responds to requests from Buyer or its Authorized Users through the Platform.
- 1.5. "Platform" means the HireVue team acceleration platform including any related mobile applications, used to deliver the Services, features and functionality described in the Documentation.
- 1.6. "Responses" means all responses to Buyer Content submitted to the Platform by End User.
- 1.7. "Scheduled Downtime" means the following Scheduled Downtime periods ("Maintenance Windows") currently reserved by HireVue, which may be changed from time to time on notice to Buyer: A maximum of four (4) hours per semi-monthly period between the hours of Midnight (12:00 A.M.) and 4:00 A.M. Mountain Time.
- 1.8. "Services" means, collectively, the Platform and related services provided hereunder, including the Subscription Services, the features and functionality described in the Documentation, and any other professional services and customer support.
- 1.9. "Service Order" means the document that specifies the Services to which the Buyer has subscribed, the applicable subscription term(s), and applicable fees. This document may also be referred to as a "Purchase Order", the form and substance of which must be approved by both Parties in writing.
- 1.10. "Site Availability" means the percentage calculated by dividing (a) the Site Uptime by (b) the difference between the total amount of clock time and the Scheduled Downtime actually used by HireVue, in a given Month.
- 1.11. "Site Uptime" shall mean the total time in a month during which all material parts of the HireVue website are operating properly and available for access and use by Authorized Users.
- 1.12. "Subscription Services" are defined as the HireVue hosted software services to which the Buyer purchases a subscription pursuant to a Service Order.
- 1.13. "Unscheduled Downtime" means the number of seconds the Services are unavailable in a particular month which are due to (i) force majeure events beyond the reasonable control of HireVue or HireVue's service providers, or (ii) a general failure of the Internet.
- 1.14. "Usage Data" means entirely anonymized data not attributable to any Authorized User, End User or Buyer which reflects data points such as volume of interviews and general patterns of use.

2. Ordering, Services and Data.

- 2.1. Buyer shall order Services by mutual execution of a Service Order which provides, at a minimum, the specific Subscription Services ordered and the price and term for such Subscription Services. The Service Order shall be incorporated into this Agreement by reference and in the event of a conflict between the terms of a Service Order and this Master Service Agreement, the terms of the Service Order shall prevail. Additional Services ordered in any subsequent Service Orders shall be governed by, and incorporated by reference into this Agreement.
- 2.2. HireVue hereby grants to Buyer permission during the applicable subscription term identified in the applicable Service Order to allow Authorized Users to access and use the features and functions of the HireVue Services for which Buyer has paid all applicable fees via a browser or the HireVue mobile application ("Mobile App") for Buyer's internal business use.
- 2.3. Buyer hereby grants HireVue permission during the Term to (i) reproduce, distribute, display and perform Buyer Content to Authorized Users and End User in connection with providing the Subscription Services on behalf of Buyer, and (ii) to access and use the Responses ("Buyer Data") to provide the Subscription Services to and on behalf of Buyer.
- 2.4. Buyer and HireVue acknowledge and agree that, as between Buyer and HireVue, Buyer Data is the property of Buyer. Buyer shall be responsible to ensure the End User has given legally sufficient consent for Buyer's collection, retention and use of their Responses. HireVue shall provide a mechanism in the Platform to collect such consent.
- 2.5. HireVue collects and uses Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Buyer or any particular Authorized User or End User.
- 2.6. Except for the rights expressly granted herein, no other rights, are granted to Buyer under this Agreement, whether expressly, by implication, estoppel, or otherwise, and all rights not expressly granted herein are reserved by HireVue. All right, title and interest in and to the Services, any software used by HireVue in connection with the Services, and related documentation are and shall remain the exclusive property of HireVue and/or its licensors, and nothing herein grants to Buyer any right to access copies of any such software, whether in source or object code form. Buyer acknowledges and agrees that: (i) the Platform, any software used in connection with the Services and related documentation are protected under U.S. and foreign copyright and other intellectual property laws; (ii) HireVue and its licensors retain all copyrights and other intellectual property rights in the Platform, any software used in connecting with the Platform and related documentation; and (iii) Buyer acquires no ownership in or to the Platform, software, data, or related documentation.

3. Fees and Payment.

- 3.1. Fees for Subscription Services are invoiced annually in advance, net thirty, or as otherwise expressly agreed and set forth in terms of the GSA Schedule Contract and Service Order or Purchase Order, and payments are due thirty (30) days from date of invoice. If all undisputed invoices are not paid when due, HireVue reserves the right to suspend access to the Services until payment is current. Such suspension shall not extend the expiration date of Services ordered. Except as expressly provided herein all amounts paid hereunder are final and nonrefundable.
- 3.2. The Contract Price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. HireVue shall include applicable taxes that will be stated separately on invoices issued to the Customer. Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1.

4. Term, Termination, and Expiration of Agreement and Renewal.

- 4.1. The term of this Agreement shall commence upon execution of this Agreement ("Effective Date") and shall continue until the sooner to occur of: (i) expiration of all Service Orders; or (ii) termination per Section 4.2 ("Term").
- 4.2. When the licensee is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HireVue shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 4.3. Upon any expiration or termination of the Agreement, Buyer will cease all use of the Services and destroy all copies Documentation (if any) that are in Buyer's possession or under Buyer's control. Upon termination or expiration of the Agreement or a specific Service Order, Buyer shall have the following options with regard to Buyer Content and Buyer Data related to each of the terminated or expired Services: 1) if Buyer requests in writing, on or prior to the date of such termination or expiration, HireVue shall provide Buyer with a copy of the Buyer Data stored on HireVue servers, and HireVue shall then delete all such Buyer Data from HireVue servers; 2) Buyer may purchase a read-only subscription to the Platform for an annual fee equal to 15% of the last annualized subscription fee for up to three years or as otherwise mutually agreed by Parties; or 3) HireVue shall purge remaining Buyer Content and Buyer Data from the HireVue servers, and HireVue shall have no further responsibility to retain copies of Buyer Data. The parties agree and acknowledge that the foregoing requirement does not apply to Analytical Data to the extent it does not contain or embody Buyer Data in a form that can be attributed to Buyer.

4.4. Unless otherwise stated in a Service Order, the start date for Subscription Services purchased under this Agreement shall be the date Buyer is provided login credentials for the Platform.

5. **Restrictions on Use.** Buyer shall not, and shall prevent its Authorized Users from using the Platform to: (i) resell, rent, lend, lease, distribute, or timeshare the Platform or otherwise use the Platform on behalf of any third party (including on a "service bureau" or similar basis), or otherwise provide third parties with access or grant third parties rights to the Platform other than as expressly permitted by HireVue, (ii) alter or remove any marks or proprietary legends contained in the Platform; (iii) circumvent or otherwise interfere with any authentication or security measures of the Platform; (iv) interfere with or disrupt the integrity or performance of the Platform; (v) send SPAM or any other form of duplicative and unsolicited messages, other than marketing and promotional messages to End Users as enabled by the intended features of the Platform; (vi) access all or any portion of the Platform by means of any crawler, scraper, bot, spider, or any other similar script or automated process; (vii) transmit through or post on the Platform unlawful, immoral, libelous, tortious, infringing, or defamatory material; or (viii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs. Buyer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Platform, and shall not modify, translate, or create derivative works based on any element of the Platform.

6. **Buyer's Responsibilities.**

6.1. Buyer understands and acknowledges that HireVue is solely a technology platform provider and does not participate in the interview, selection, or hiring of candidates, which is Buyer's sole responsibility, notwithstanding use of the Service as a part of and in connection with such activities. Accordingly, it is Buyer's sole responsibility to comply with all applicable laws regarding its use of the Service and with the Buyer Content it presents to its Authorized Users and End Users, including without limitation all applicable employment and hiring laws and regulations and all record keeping and data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of personally identifiable data under the laws of the country and any other local jurisdiction in which Buyer is operating or collecting and transferring personal data. HireVue shall have no liability related to the Buyer Content presented to Buyer's Authorized Users or End Users, or for record keeping requirements and data protection obligations applicable to Buyer unless expressly assumed by HireVue pursuant to this Agreement.

6.2. Buyer is responsible for providing and maintaining adequate facilities, computer equipment, internet connections, connectivity and firewall access required for the use of the Services. Such technical requirements can be viewed at <http://hir.vu/15S5OOH>.

6.3. Buyer agrees not to ask Respondents for, and to instruct Respondents not to provide, any PHI or SPI in any Responses. Should Buyer become aware that any PHI or SPI is provided by an End User in any Response, Buyer agrees to promptly notify HireVue and request redaction of such information from the interview or deletion of the interview where redaction is not feasible. As used herein PHI means Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). SPI means Sensitive Personal Information consisting of date of birth, social security number, driver's license or other state-issued identification number, or financial account information.

6.4. Buyer shall notify HireVue in the event of a subject access request (or equivalent request from Respondents) and provide HireVue direction with regard to correcting or deleting personal data in response to such requests made to Buyer. HireVue shall notify Buyer within five (5) business days if it receives any such subject access requests related to End Users and both parties shall cooperate to provide a response and take action in compliance with applicable legal requirements.

7. **Warranty**

7.1. HireVue shall provide the Services in a professional and workmanlike manner and in compliance with the Documentation in all material respects. During the subscription term set forth in an applicable Service Order, in the event that Buyer notifies HireVue that the Services do not materially conform to the specifications set forth in such Service Order and the product documentation provided by HireVue, HireVue shall use commercially reasonable efforts to provide Buyer with support to address such non-conformity. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS-IS" AND "WHERE-IS", AND HIREVUE MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, TO BUYER OR ANY OTHER PERSON OR ENTITY AND EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL SUCH IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE RESPONSES, METRICS, SCORES, AND ANALYTICS, INCLUDING BUT NOT LIMITED TO THOSE AS TO THE ACCURACY, SECURITY, RELIABILITY, PERFORMANCE, RESULTS, TIMELINESS, COMPLETENESS, TITLE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES, DELIVERABLES OR ANY INFORMATION PROVIDED IN CONNECTION THEREWITH, OR ANY SELECTIONS OR HIRING DECISIONS MADE BY BUYER IN CONNECTION WITH THE USE OF THE SERVICES OR OTHERWISE. HIREVUE DOES NOT WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE OR ERROR-FREE, AND MAKES NO

RESPRESENTATION OR WARRANTY WITH RESPECT TO ANY RESULTS OBTAINED FROM USE OF THE SERVICES. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

7.2. HireVue shall provide Buyer and the Authorized Users access to the Subscription Services at all times outside of Scheduled Downtime periods. Excluding Scheduled Downtime, HireVue guarantees a minimum Site Availability of ninety-nine percent (99.0%) during each month. Excluded from this Site Availability calculation shall be Unscheduled Downtime. However, HireVue and its service providers will use commercially reasonable efforts to provide and maintain the Services in accordance with the terms of the Agreement during such Unscheduled Downtime.

7.3. Buyer understands and agrees that Buyer's download and/or use of any third party software or services (e.g. web browser or video plug ins) made available or required in conjunction with or through the Services is at Buyer's own discretion and risk and that Buyer will be solely responsible for any damages to Buyer's computer system or loss of data that results from the download or use of such third party software and services.

7.4. HireVue shall not be liable to Buyer under any circumstances in which a third party mobile application host (i.e. Apple, Google, RIM, etc.) or a third party service provider (i.e. Verizon, ATT, Sprint, etc.) fails to provide continuous connectivity or other service required for download, communication, or other functionality of the Platform.

7.5. Some states or other jurisdictions do not allow the exclusion of implied warranties, so the above exclusions may not apply to Buyer. Buyer may also have other rights that vary from state to state and jurisdiction to jurisdiction.

8. **Optional Features.** The following terms apply if Buyer enters a subscription for, uses or enables the following HireVue products, features or functionality.

8.1. If Buyer subscribes to use Coordinate (formerly known as Reschedge), Buyer hereby grants to HireVue the right to collect and store credentials for and to access Buyer's email and calendar application solely for the purpose of enabling functionality of Coordinate. Such information shall be considered Buyer's Confidential Information pursuant to section 14 below.

8.2. Public Share Links. If Buyer uses HireVue's Public Share Links feature to publish links to Buyer Content or Buyer Data on social media or other public mediums, Buyer agrees: a) Buyer has all the rights and licenses necessary to publicly share any content made accessible through the Public Share Links (including consent from the End User as applicable); b) Buyer shall not publicly share any content through the Public Share Links which is inappropriate, defamatory, profane, libelous, tortuous or in any way illegal; and c) HireVue shall have the right to remove any Public Share Links to content that violate (a) or (b) as solely determined by HireVue.

8.3. Direct Access Links. Buyer shall not be permitted to activate Direct Access Links functionality.

8.4. Integrations. HireVue and/or Buyer may partner with certain third party applicant tracking and other service providers (each, an "Integration Partner") to provide for integration of certain features of the Subscription Services (each, an "Integration"). If Buyer accesses HireVue's Services through the use of an Integration HireVue hereby authorizes Buyer to access and use the Subscription Services that Buyer has purchased hereunder through such Integrations. Buyer understands that Integration Partners may apply separate terms and charge separately for use of such Integrations, and that Buyer shall be solely responsible for compliance with any such terms and payment of any such fees charged by Integration Partners for Buyer's implementation and use of such Integrations. HIREVUE SHALL HAVE NO LIABILITY TO BUYER IF SUCH INTEGRATION IS UNAVAILABLE DUE TO ACTS OR OMISSIONS OF THE INTEGRATION PARTNER OR OUTAGES OF THE INTEGRATION PARTNER SOLUTION. SHOULD HIREVUE'S RIGHT TO INTEGRATE WITH SUCH INTEGRATION PARTNER SOLUTION TERMINATE, BUYER'S RIGHT TO USE THE INTEGRATION TO ACCESS THE HIREVUE SERVICES HEREUNDER SHALL ALSO TERMINATE AND BUYER MAY ACCESS THE HIREVUE SERVICES DIRECTLY THROUGH THE HIREVUE PLATFORM.

8.5. Insights (otherwise known as "IRIS"). Buyer hereby grants to HireVue permission during the Term to perform (or have a third-party service provider perform) certain processing, transcription, transformation, and analytics on the non-personally identifiable information included in Buyer Data and associated meta data and derivatives thereof (such as text transcripts of audio and audiovisual components, subsequent actions and results, etc.), alone and together with Usage Data, to derive certain mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data therefrom (the "Analytical Data"). Unless otherwise stated in the Service Order, HireVue may use Analytical Data in connection with developing, enhancing, maintaining, supporting, and providing the HireVue Service to Buyer and HireVue's other customers, provided that HireVue may not disclose Buyer Data to any third party in raw form, or disclose any personal information regarding Authorized Users or End Users, or identify Buyer, Authorized Users or End Users on an individual basis as the source of such Analytical Data. In the event that the applicable Service Order excludes the foregoing rights and the Service Order includes the Insights Service, (a) Analytical Data will only be used to provide the Insights Service to Buyer, and (b) the Insights Service will NOT provide any analytical data derived from any other HireVue customers' use of the HireVue Service.

9. **Publicity.** During the term of this Agreement, Buyer hereby agrees that HireVue shall have the right, but not the obligation, to list Buyer as a customer who uses the Services on the HireVue website and/or in presentations and link to Buyer landing pages. HireVue will remove Buyer's name from any such list within thirty (30) days after any termination of this Agreement or upon Buyer's request. Neither party may issue any press release concerning this Agreement without the other party's consent. HireVue acknowledges that advertising is limited by GSAR 552.203-71.

10. **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

11. **Assignment.** This Agreement may not be assigned by either party without the other party's prior written approval, except that either party may assign this Agreement in connection with any merger, or reorganization or any sale or transfer of all or substantially all of its assets or stock. If the assigning party is Buyer and the merger or acquisition results in the size of the surviving or successor entity being materially larger than the size of Buyer prior to the merger or acquisition, Buyer and HireVue will meet in good faith to determine a commensurate increase in price for the remaining subscription period for any unlimited use subscriptions which will be executed in a new written Service Order and/or Purchase Order. Subject to the foregoing, this Agreement shall be binding upon the parties, and upon their heirs, acquirers, executors, personal representatives, administrators, and assignees.

12. **Indemnification and Limitation of Liability**

12.1. HireVue shall indemnify, defend and hold harmless Buyer and its affiliates and their respective officers, directors, employees, agents and contractors, from and against, and pay any costs, expenses and amounts finally awarded or agreed to in settlement of, any and all third party claims to the extent such claims are based upon (i) the negligence and/or willful misconduct of HireVue in performing this Agreement, (ii) any allegation that the software underlying the Platform, when used as provided and in accordance with the terms and conditions of this Agreement, infringes such third party's intellectual property rights, or (iii) HireVue's violation of applicable laws.

12.2. Reserved.

12.3. In all requests for indemnification under Section 12.1 above (i) Buyer shall promptly provide HireVue with written notice thereof and, at HireVue's request and expense, reasonable cooperation, information, and assistance in connection therewith; and (ii) HireVue shall have control and authority with respect to the defense, settlement, or compromise thereof, provided that it shall not settle any such claim without prior written consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned, or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

12.4. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12.1 ABOVE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF (1) AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY BUYER FOR THE SERVICE ORDER(S) THE CLAIMS ARE BASED ON OR (2) \$50,000. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO BUYER. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

12.5. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM HIREVUE'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

13. **Independent Contractors.** HireVue and Buyer are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither Party is an agent or representative of the other nor is either Party authorized to, and shall not, make any warranties or representations or assume or create any other obligations on behalf of the other.

14. **Confidentiality.** 14.1. Each party (each a "Discloser") agrees that, in the course of performing its obligations hereunder, either might provide to the other (the "Recipient") or develop information identified as confidential or that reasonably could be construed as confidential ("Confidential Information"). HireVue's Confidential Information shall include, but shall not be limited to, HireVue's trade secrets, know-how, user manuals and screens, service development plans, service specifications, computer programs, marketing plans, financial data, and Buyer's Confidential Information shall include, but shall not be limited to raw Buyer Data (excluding Analytical Data to the extent not embodying raw Buyer data), billing information, software, and systems. During the Term of this Agreement and at all times thereafter, the Recipient and its employees and agents shall maintain the confidentiality of the Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available the Confidential Information to any third party nor use such Confidential Information except, in either case, as authorized by this Agreement or in connection with the performance or enforcement of this Agreement. The Recipient shall not disclose any such Confidential Information to persons not an employee or agent of Recipient nor to its Affiliates without the prior written consent of the Discloser. Any misuse or breach hereof must be reported promptly. Nevertheless and notwithstanding the foregoing statement, each party will attempt to comply with legally executed subpoena served upon such party.

14.2. The non-use and non-disclosure obligations of this Section 14 shall not apply to any information that (a) was already known to the Recipient at the time of disclosure, (b) was already in the public domain at the time of disclosure, or (c)

was received or developed by the Recipient independent of any information received from the Discloser. Recipient may disclose information pursuant to a request under applicable law. Unless prohibited by law, if the information requested is Discloser Confidential information, Recipient shall notify Discloser of the request and give Discloser a reasonable opportunity to establish that the Discloser Confidential Information is exempt from disclosure under one or more exemptions under applicable law.

- 14.3. HireVue recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor. Notwithstanding the foregoing, the Parties will utilize best efforts to obtain the maximum protection available for HireVue Confidential Information.

15. **Compliance with Laws.** The parties shall, in the performance of all obligations hereunder, fully comply with all applicable international, Federal, State and local laws, ordinances, treaties, rules, regulations, orders and policies applicable to or binding upon them.
16. **E-Business Activities.** Either party may use a third party service provider in connection with ebusiness activities (e.g., to route or translate EDI or XML messages, or to host web based services). The party contracting with a service provider must require that such service provider (a) use information disclosed to or learned by such service provider in connection with providing services solely for the purpose of providing the applicable services, and (b) not disclose such information to any third party. Each party will be liable for the acts or omissions of its service provider in connection with activities contemplated by this Agreement.
17. **Survival.** The provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement will survive termination or expiration.
18. **Entirety of Agreement.** The parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist Service Order and/or Purchase Order(s), is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter of this Agreement. In no event will contractual terms inserted in a Buyer's purchase order be incorporated into or made a part of this Agreement.
19. **Force Majeure.** Except for any obligation to pay amounts due, either Party hereto will be temporarily excused from performance hereunder, in whole or in part, for any period of time that the Party is prevented from performing its obligations as a result of an act of God, governmental regulation or act, war, natural catastrophe, civil disobedience, court order, or other cause beyond the Party's reasonable control. Such non-performance will not constitute grounds for default.
20. **Governing Law.** This Agreement is made in accordance with and is governed and construed under The Federal Laws of The United States, without reference to conflicts of laws principles.
21. **Legal Advice.** Buyer acknowledges and agrees that HireVue has not and will not provide Buyer with any legal advice and specifically HireVue has not given legal advice regarding compliance with employment, data privacy, or other relevant laws, rules, or regulations in the jurisdictions in which Buyer uses the Services nor will Buyer construe any HireVue communications as legal advice. Buyer agrees that it is solely responsible for drafting and approving its own Buyer Content, including legal review as necessary.
22. **Reserved.**
23. **Acknowledgement.** Each party acknowledges that it has read and understands this Agreement, expressly agrees the signatory hereto has full power and authority to execute this Agreement, and agrees to be bound by its terms and conditions. Further, it represents that it has consulted, or has had the opportunity to consult with its legal, tax, and financial advisors in connection with the execution and performance of the Agreement. Buyer understands and agrees that except as expressly set forth in Section 4.2 HireVue offers no buy-backs, money back guarantees, or refunds. Buyer acknowledges and agrees that Buyer is not relying upon any verbal or written representations whatsoever, except as expressly set forth in this Agreement. This Agreement can only be modified in writing, signed by the parties, or their duly authorized representatives. Buyer acknowledges and agrees that HireVue does not guarantee or represent that any software or services conveyed or provided hereunder, when or where accessed, used, provided, or installed, will guarantee any results.

By signing below, the signatory expressly acknowledges and agrees he/she has all requisite power and authority to bind HireVue or Buyer, as applicable, to the terms of this Agreement.

HireVue, Inc.

Buyer:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Infinera Corporation
9005 Junction Drive
Annapolis Junction, MD 20701

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

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

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A-INFINERA

THIS ATTACHMENT A establishes the terms and conditions for use of any Infinera software that is embedded on or supplied with Infinera equipment.

1. Right to Use License; Restrictions. Subject to these terms, the Ordering Activity is hereby granted a personal, non-transferable, non-exclusive license, without right to sublicense, to use the copy and version of Infinera software and any documentation that is supplied therewith (the "Software") for its own internal business purposes and in object form only. Each license is specific to the release and particular network element with which it is supplied. The license to use the Software does not include and the Ordering Activity shall not, without Infinera's prior written consent, (i) reproduce (except as expressly set forth herein), modify, translate or create any derivative work of all or any portion of the Software; (ii) sell, rent, lease, loan the Software or otherwise transfer the license granted hereunder; (iii) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of the Software, (iv) display or disclose the software to any third party other than persons employed by the End User who are using it on the Ordering Activity's behalf at the Ordering Activity's premises (v) use the software for third party training, commercial time sharing or service bureau use; (vi) remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Software; (vii) unbundle any components of the Software; (viii) remove any Software from any Infinera equipment in which it is embedded; or (ix) cause or permit any third party to do any of the foregoing. Ordering Activity may make one copy of the Software solely for backup and archival purposes. Ordering Activity will include on any copy of the Software it makes all markings, notices and legends affixed to or embedded in the Software. Ordering Activity will maintain a record of the number and location of all copies of Software that it makes, and will make those records available to Infinera on request.

2. Ownership Ordering Activity acknowledges that the license granted under this Agreement does not provide Ordering Activity with title to or ownership of the Software, but only a right of limited use under the terms and conditions of this Agreement. Sole title to the Software and documentation and to any corrections, bug fixes, enhancements, modifications, updates, upgrades, new versions, derivative works and copies of the Software and documentation, and to any associated patents, trademarks, trade secrets, copyrights or other intellectual property rights, remains with Infinera or its licensors.

2. Warranty Disclaimer. EXCEPT AS SET FORTH IN EXHIBIT A, INFINERA MAKES NO OTHER WARRANTY TO THE ORDERING ACTIVITY, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE, OR TRADE. INFINERA DOES NOT WARRANT THAT ANY EQUIPMENT, SOFTWARE, OR

PART THEREOF WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE, OR ERROR-FREE, OR THAT ANY ERRORS IN THE EQUIPMENT OR THE SOFTWARE WILL BE CORRECTED.

3. Reserved.

4. Export Restrictions. Ordering Activity acknowledges that Infinera products are U.S. origin goods and agrees not to export, re-export, transfer or allow third parties to access any Infinera products that it purchases or licenses where such export, re-export, transfer or access is not permitted under the applicable rules and regulations of the United States Government and agencies.

5. Reserved.

6. Exhibit A PRODUCT WARRANTY

1.01 Warranty Term. Infinera warrants that during the Hardware Warranty Period or Software Warranty Period, as applicable, the Products shall be free from defects in design, material and workmanship under normal use and service, and shall conform to Infinera's applicable Specifications. The respective Hardware and Software Warranty Periods for Products are set forth in the table below and commence upon shipment of the Product.

	DTN-X (XTC-2, 2E, 4 & 10)	DTN	FlexILS (MTC- 9)	XT-500	CX (CX-10E, CX- 40E, CX- 100E)	XTM- Series (TM-102, 301, 3000 & NID & EDU)	XTG- Series

HW Term / SW Term	2 years / 90 days	2 years / 90 days	2 years / 90 days	2 years / 90 days	1 year / 90 days	1 year / 90 days	1 year / 90 days

1.02 Warranty Exceptions. The Parties acknowledge and agree that Infinera shall not be liable pursuant to Section 2.01 for: (i) Products that are abused or improperly handled or stored by any person other than Infinera or its authorized services agents; (ii) Products that are maintained, repaired, modified or altered by any person other than Infinera or its authorized service agents; (iii) damage to Products that occurs from any cause other than ordinary use (such as, for example, acts of nature, accident, fire, lightning, water damage, neglect, misuse, improper installation or testing, or unauthorized attempts to repair, alter or modify); (iv) normal wear and tear or obsolescence; (v) use of the Product not in accordance with the Specifications or any operational materials provided by Infinera; or (vi) use of the Products with third party products not sold by Infinera, e.g., using grey market or third party products not purchased from Infinera with Products without Infinera's express written consent. In addition, Infinera shall not be responsible for any Products that are installed by companies and/or contractors that are not certified to install the Products.

1.03 Third Party Products. If an Ordering Activity procures or installs a product not developed or manufactured by Infinera ("Third Party Product"), then Infinera makes no warranty with respect to such Third Party Product, and Ordering Activity's use of such product is at their own risk and may void the warranty for the Products in which such Third Party Product is installed. Further, Infinera shall have no obligation to provide hardware or software support for such Third Party Product.

1.04 Warranty Procedure. During the applicable Hardware Warranty Period or Software Warranty Period, Ordering Activity promptly shall notify Infinera of all potential warranty claims pursuant to this Agreement. If it is determined by Infinera that an item of Product needs to be returned, a return material authorization ("RMA") number shall be assigned by Infinera.

1.05 Hardware RMA Process. During the Hardware Warranty Period, Infinera shall, within thirty (30) calendar days of receipt of a returned item of Product with a valid RMA number, repair or replace and, if needed, redesign, any such item (hereinafter an "item") that is defective as to design, workmanship or materials, provided that: written notice of any defect is given to Infinera promptly upon discovery of the claimed defect, such notice is given to Infinera within the Hardware Warranty Period specified above, and the defective item is promptly returned to Infinera. All repaired and replaced parts shall be shipped preloaded with the current version of the Software used by Ordering Activity. Ordering Activity agrees to return such item of Product within thirty (30) days of the date an RMA ticket is opened for such item. All decisions to repair or replace or redesign shall be at Infinera's option. If Infinera provides an advance replacement Product to Ordering Activity and does not receive the failed Product from Ordering Activity within seven (7) calendar days of the date such replacement Product was sent to Ordering Activity, Ordering Activity agrees to purchase such replacement Product and pay the Purchase Price for the replacement Product provided by Infinera.

Any item repaired or replaced by Infinera pursuant to the terms of this warranty shall continue to be warranted for the longer of the remainder of the original Hardware Warranty Period for such Product or ninety (90) days. Item(s) which are replaced hereunder shall automatically become the property of Infinera and their replacement shall become the property of Ordering Activity. Infinera shall be responsible for the cost of shipping and insuring the items to and from Ordering Activity.

1.06 Software Maintenance Releases. During the Software Warranty Period and during any period for which the Ordering Activity has purchased Software Subscription Services, Infinera agrees to provide to Ordering Activity all applicable maintenance releases for the Software for software bug fixes for a release of Software purchased by Ordering Activity for the shorter of: (i) two (2) years from the initial release date of the Software; or (ii) the release date for the second Software release following such Software release. The Parties agree that Infinera shall have the right to provide such maintenance releases of Software as part of a general release of Software; provided, however, that such provision of a Software release shall not grant Ordering Activity with additional right to use licenses to any additional features included in such release. Notwithstanding anything to the contrary in this Agreement, Infinera makes no warranty with respect to any third party software included with the Products. Ordering Activity's sole remedy with respect to such third party software shall be pursuant to the original licensor's warranty, if any, to Ordering Activity, to the extent permitted by the original licensor.

Exhibit B
SUPPORT SERVICES

7. 1 EXTENDED WARRANTY SERVICES

1.1 Extended Hardware Warranty. Ordering Activity shall have the option to purchase annual extensions to the Hardware Warranty Period for the hardware portion of the Product (the "Extended Hardware Warranty").

1.2 Reserved.

1.3 Reserved.

8. 2. SOFTWARE SUBSCRIPTION/SUPPORT SERVICE

Ordering Activity may purchase an annual software subscription service (the "Software Subscription Service") for the Software to the extent eligible for Software Subscription Service, for the first year from the purchase of the Product, for each DTC, OTC, and ATC. For the Infinera DTN-X, this service is called the "Software Support Service", and the Ordering Activity may purchase an annual software support service for each XTC chassis, as well as for each DTN-X line card (AOLM, AOLX, SOLM, or SOLX). After the first year from the date of purchase of the Product, the Ordering Activity shall have the option to purchase the Software Subscription/Support Service on an annual basis. The Software Subscription/Support Service entitles Ordering Activity to all new software releases (on an "if and when available" basis) of the Software. The Software Subscription/Support Service shall be available to Ordering Activity on an annual basis, commencing on the date set forth in the purchase order, and shall apply to each new DTC, OTC, ATC, XTC, or DTN-X line card on the date the Product comprising such DTC, OTC, ATC, XTC, or DTN-X line card has been Accepted by Ordering Activity. The Parties acknowledge and agree that Infinera has no obligation to develop any future Software.

The Infinera Software Subscription/Support Service commences upon Product Acceptance. .. The Parties acknowledge and agree that the Software Subscription/Support Service shall apply to all DTCs, OTCs, ATCs, XTCs, and DTN-X line cards deployed in Ordering Activity's network, including any laboratory equipment.

Ordering Activity may elect to discontinue this Software Subscription/Support Service at any time. Upon such discontinuation, Infinera shall remit to Ordering Activity the pro rata portion of pre-paid fees for the Software Subscription/Support Service. In the event that Ordering Activity elects to issue a new purchase order to reinstate coverage under the Software Subscription/Support Service after discontinuing such service, or Ordering Activity elects to purchase the Software Subscription/Support Service at any time after the date any Product is first Accepted by Ordering Activity under this Agreement, Ordering Activity agrees that it shall be obligated to pay a reinstatement fee equal to the fees that Ordering Activity would have paid under the Software Subscription/Support Service for any period of discontinuation.

9. 3. EF&I SERVICES

Site Survey and Detailed Engineering Package:

Conduct a site survey of each equipment site location to verify local conditions

Prepare site issues report

o Includes conditions requiring remediation prior to install and/or other such items, and their assignments to responsible parties

• Prepare initial Engineering Design Package (EDP)/Engineering Document

o Includes installer's SOW, installation notes, list of equipment and installation materials, site access/security requirements, cable running list (power, fiber and data), floor plan, cable run diagram, grounding schematic, rack/cabinet facing diagram, link engineering drawings, node acceptance document, link acceptance document, IP design and commissioning data

• Prepare installation materials per specifications o Materials can include, per engineering design: Infinera racks/cabinets; vertical fiber duct to connect existing horizontal duct to fiber management in new/existing equipment rack/cabinet (up to 2 per rack/cabinet); intra-bay power cable and DC power cable runs for the chassis site locations (assuming no intermediary connection points); power, ground, lugs and terminations; intra-shelf/node line side fiber patch cables; intra-node Nodal Control and Timing (NCT) CAT5 Ethernet cabling; and labeling materials. Materials for client side fibers can also be defined, and quoted outside of scope. Breakers and/or fuses for chassis site locations and rack spacer/cable managers are also included, per engineering design, for deployments in the Americas.

• Refine engineering design package (use mutually agreed-upon format)

o Includes contact list, directions to site (or GPS coordinates), Installer's SOW, Installer work items and installation notes, list of equipment and installation materials, floor plan drawing and rack elevation drawing, equipment shelf detail drawings, cable running lists (power, fiber and data), cable run diagram, power cable assignment and management information, optical fiber assignment and management information, commissioning data.

• Prepare and furnish final as-built Engineering Design Packages (EDPs)/Engineering Documents

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Note: Non-NEBS cabinets are provided for standard Turnkey Install within the EMEA and APAC region. NEBS compliant cabinets are available as Out of Scope work. For all other regions, racks are provided for DTN/ATN standard Turnkey Install and NEBS-compliant cabinets are provided for standard DTN-X standard Turnkey Install.

Materials Planning and Procurement:

- Procure, stage and deliver to site locations the following materials, as applicable:
 - Infinera equipment rack(s)/cabinet(s) and spacers/cable managers (if DTN-X cabinet is not ordered).
 - Rack/cabinet mounting hardware, anchors and top-support materials for each equipment rack/cabinet
 - Infinera provided PDU/Fuse panel for Infinera OTC/ATC site locations only
- Power cables – Ground cable to connect new rack/cabinet to existing grounding system o Ground cable to bond Infinera chassis to rack/cabinet
- Ground cable to connect new rack to existing grounding system
- Ground lugs, H-Taps, earth bar connection(s) and all necessary associated materials
- 2" or 4" Fiber duct or copex equivalent (vertical on rack/cabinet). (Express downspouts that are not required to be cut in are included in standard scope of work. Any downspouts that require a cut are Out of Scope work.)
- Line-side and intra-node fibers
- Consumables (to include velcro, cable ties, labels, waxed cord, etc.)

Install Site Infrastructure:

- Accept delivery of Infinera equipment and materials at third-party storage facility o For DTN-X it is preferred to drop ship directly to site with inside delivery.
- Unpack, inventory, inspect and deliver all equipment and installation materials to site location footprint
- Install new rack/cabinet, or use existing equipment rack/cabinet at each site location footprint
- Install a fuse panel/PDU into new or existing equipment rack/cabinet at each Infinera OTC/ATC site location
- Ground all new equipment racks/cabinets to existing ground system
- Install and terminate DC power cabling (single insulated by default, double insulated if required) from customer Battery Distribution Fuse Bay (BDFB)/Power distribution Panel (PDP) to Infinera equipment shelves and install and terminate power to an appropriate fuse panel in OTC/ATC site locations.
- Infinera DC power cable sizing is based on Infinera equipment maximum draw @ 55 degrees Celsius. Any other calculations using other than 55 degrees Celsius is Out of Scope.
- The following table defines the power runs included with the standard Scope of Work. Delivery of power runs beyond the listed specifications is considered Out of Scope Work.

Product Line/Chassis	Number and Type of Feeds	Max Cable Length*	Max Cable Size
DTN/ DTC	One (1) A Feed and Return, and One (1) B Feed and Return	Up to 50 ft (14.24 m)	4/0 AWG or 25 mmsq
ATN/ ATC	One (1) A Feed and Return, and One (1) B Feed and Return	Up to 30 ft (9 m)	14 AWG or 2.5 mmsq
OLA/ OTC	One (1) A Feed and Return, and One (1) B Feed and Return	Up to 30 ft (9 m)	12 AWG or 4 mmsq
DTN-X / XTC-10	Up to Six (6) A Feeds and Returns, and Six (6) B Feeds and Returns	Up to 30 ft (9 m)	1/0 AWG or 35 mmsq in EMEA
DTN-X / XTC-4	Up to Four (4) A Feeds and Returns, and Four (4) B Feeds and Returns	Up to 30 ft (9 m)	1/0AWG or 35 mmsq in EMEA

*Cable lengths are measured on the cable ladder, from the middle of the top of the equipment rack to the middle of the top of the BDFB/PDP.

- Label racks/cabinets and power cable according to approved customer standard. If no customer standard is provided, Infinera will label per established Infinera practice.

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- 'Red-Line' engineering specifications
- Daily site clean-up and disposal of waste
- Supply of all required installation tools

Perform Equipment Installation & Commissioning:

- Unpack, inventory, and inspect all equipment
Install all new chassis' in the rack/cabinet per the EDP/Engineering Document
Ground (bond) the new chassis' to the rack(s)/cabinet(s)
- Install modules in the chassis' per the EDP/Engineering Document
- If required, connect pre-terminated, existing power cables to each Infinera chassis.
- Install, scope, clean, measure insertion loss, test and connect all of the intra-node fiber jumpers and Line side fiber jumpers from equipment to customer line side fiber patch panels. (Standard service provides line side fibers up to 30 meter length, of SC-SC connector type.)
- Install Nodal Control and Timing (NCT) and DCN Ethernet cabling per the EDP/Engineering Document (if required)
- Label equipment shelves and intra node fiber, power cables & data cables per approved customer standard. If no customer standard is provided, Infinera will label per established Infinera practice.
- Perform site quality audit checklist
- Provide 'Rack Face' as-build EDP/Engineering Document and intra-node fiber diagram

Commission and Turn Up Equipment:

- Verify DC power and grounding
- Unpack and inspect all circuit packs & chassis backplanes
- Install all circuit packs
- Inspect, clean and install all intra-node fiber cables
- Connect any pre-existing, pre-terminated intra-node and Data Communication Network (DCN) management data cables (if required).
- Commission and configure equipment with pre-furnished network design and DCN/OSC IP Addresses
- Connect pre-installed fiber jumpers to Infinera line side modules per the EDP/Engineering Document (if required)
- Perform span clean up if required
- Install attenuators/pads per EDP/Engineering Document.

Note: For ATN install, additional manual adjustment of span performance may be required to bring system in line with span engineering design specifications. If such adjustments are necessary because Infinera was provided with inaccurate fiber span information prior to the install project, additional labor fees shall apply for making span performance adjustments. The labor shall be rendered via the Infinera On-Site Engineering Service.

Note: For the Infinera ILS2 Line system, additional manual adjustment of Raman span performance may be required to bring system in line with span engineering design specifications. Such adjustments must be performed via the Infinera On Site Engineering Service.

Note: For SLTE Activation, additional manual adjustment of span performance may be required to bring system in line with span engineering design specifications. Such adjustments must be performed via the Infinera SLTE Link Activation Service.

Note: For networks carrying 40GbE and higher transmission rates, additional fees shall apply for testing. These fees shall be charged via the Infinera On Site Engineering Service.

Perform Test, Acceptance, and 24 Hour Bit-Error Rate Test (BERT):

- Alarm clearing on each span and digital link
Inspect and validate performance for each span and digital link
Furnish appropriate test equipment for the applicable service types
- Configure and run BERT on a single end to end circuit; standard test period is 24 hours
- Provide BERT results in a mutually agreed upon format
- Provide notification to customer operations for node / network acceptance
- Perform equipment and alarm verification testing
- Provide link design as-build diagram
- Provide node/link acceptance documentation

Program Management and Technical Oversight:

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- Identify/assign a dedicated Infinera Program Manager as the single point of contact for all project logistics, schedules and technical issues. Program Manager responsibilities include:
 - Recommend best practices
 - Manage all survey and installation, test and turn up schedules
 - Provide regular updates to customer management within a mutually agreed upon time interval
- Identify/assign a Lead Technical Oversight Engineer or Tech Support Engineer whose responsibilities include, but are not limited to:
 - Prior to deployment, assist customer with technical requirements, i.e. IP Addressing o Primary technical interface for Field Teams in all aspects of installation, commissioning, troubleshooting, route validation and testing
 - Interface and assist Ordering Activities with technical issues during the deployment process
 - Span and digital link turn-up, testing and acceptance

Ordering Activities Responsibilities

- Provide Infinera with pre-survey data, which includes:
 - Site address, site contact information, and access information o Aisle/bay rack/cabinet assignment(s) o Aisle/bay/breaker assignments for DC Power (if applicable) o Specific DC power requirements – i.e. cable size, cable diversity
 - Aisle/bay/shelf assignments for Outside Plant (OSP) fiber panel(s)
 - Aisle/bay/shelf assignment for DCN management network connectivity (where applicable)
 - Any specific hardware requirements – i.e. specific DC breakers, AC to DC rectifier systems, specific fiber jumper manufacturer or requirement, etc. o IP Addressing schemes
 - Specific installation standards outside of Telcordia GR-1275 o Labeling standards
 - Testing requirements and scope – i.e. if testing is beyond the scope described in this document
- Coordination of site access.
- Ensure that authorized staff for operation and maintenance is available during the entire EF&I period to provide assistance with Infinera Customer Support when requested.
Notify Infinera of any additions, relocations or changes to equipment via Infinera program manager and/or sales account team. Do not contact Infinera Support hotline (877-INF-5288) or email <techsupport@infinera.com>

Assumptions and Additional Conditions

Ordering Activity must have all pre-work 100% complete.

- All sites must be accessible by standard vehicles.
- Reasonable site access will be provided to all engineering, installation, and test personnel.
- Provide complete and accurate site location information.

10.

4. INFINERA SPARES MANAGEMENT- NEXT BUSINESS DAY ARRIVAL

General. Infinera shall provide Ordering Activity with spares management services Next Business Day Arrival (“Spares Management NBD”). Spares Management NBD requires an annual service contract with Infinera that provides, in the event of a hardware failure, an advanced delivery of a replacement module will arrive at the designated Ordering Activity site no later than the following business day after the Return Material Authorization (RMA) request is issued by Infinera. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days. Infinera will provide delivery of a hardware replacement module by the next business day provided that the RMA number is issued before 2PM local time (PST in North America, or CET in Europe). All RMAs issued after 2PM local time will be processed the next business day and arrive the following business day thereafter.

Scope of Service. Spares Management includes the following:

- Access by Ordering Activity to the Infinera Customer Support Technical Assistance Center (TAC) 24 hours a day, 7 days a week, 365 days a year (24x7x365) to request a spare module.
- Obligation for the spare to arrive at the designated Ordering Activity's site by the next business day of Infinera's confirmation of the need for the dispatch with the appropriate spare module.
- Note that Spares Management NBD is available only for those cities mutually agreed upon by the Parties.

Assumptions and Additional Conditions. The provision of the Spares Management by Infinera is subject to each of the following assumptions:

- This Service does not include on-site engineer dispatch service(s). However, this service can be combined with the purchase of an Infinera First Line Maintenance service, which is sold separately.

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- For all Ordering Activity laboratory equipment, and unless otherwise mutually agreed upon, this service shall provide Next Business Day Ship replacement service.
- Infinera shall not be obligated to provide Spares Management NBD until 45 days after the issuance and acceptance of a purchase order in accordance with the applicable agreement, and Ordering Activity has provided a complete list of its sites that are to be covered by this Service (addresses/GPS coordinates consistent with the delivery locations for the Product).
- In the event Ordering Activity purchases Spares Management NBD for Product following expiration of the Warranty Period, it must also purchase an Extended Hardware Warranty Service for a concurrent duration for such Product.
- Spares Management must be purchased for Ordering Activity's entire network.

Ordering Activity Responsibilities. The Ordering Activity shall be responsible for each of the following:

- Cooperate with Infinera to confirm that Infinera has a complete listing of all Products, including serial numbers, in order to properly establish and track service entitlement.
- Provide a site identification or site contact number.
- Ensure that authorized staff for operation and maintenance is available during the entire support period to provide Infinera with information (e.g., model, serial number, current failure symptoms) upon request.
- The defective module is not required to be returned before Infinera delivers a replacement. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days.
- Notify Infinera of any additions, changes and relocations of equipment covered under this service.

Exclusions. The following items and conditions are excluded from the Spares Management NBD Service (and any calculation of performance penalties):

- RMA/FRU Exchange for Defects or malfunctions caused by:
- Actions of personnel not contracted by the Ordering Activity or Infinera;
- Failure of the Ordering Activity to follow Infinera's installation, operation, or maintenance instructions;
- Failure of Equipment that is not serviced by Infinera;
- Abuse, misuse, or negligent acts of personnel not contracted by Infinera.
- FRU Defects or malfunctions caused by:
- Modifications made to FRUs by non-Infinera personnel; or
- The attachment to FRUs of Equipment not being supported by Infinera
- Consumable items that are not under maintenance support coverage as described in the FRU list.
- Delivery of documentation

11.

5. INFINERA SPARES MANAGEMENT – 4 HOUR SPARES ARRIVAL

The Infinera Spares Management – 4 Hour Spares Arrival Service requires an annual service contract with Infinera. In the event of a hardware failure, this Service provides advanced delivery of a replacement module to the designated Ordering Activity site within 4 hours from the time the Return Material Authorization (RMA) was issued and approved by Infinera. The defective module is not required to be returned before Infinera delivers a replacement. After the replacement module arrives at the site, the defective module must be returned to Infinera within ten (10) calendar days.

Assumptions and Additional Conditions

- Infinera shall provide Spares Management Service in accordance with an agreed upon schedule once the following occur (i) acceptance of a purchase order for the Spares Management Service and (ii) and the Ordering Activity has provided a complete list of its sites to be covered by this service (addresses/GPS coordinates consistent with the delivery locations for the Product).
- The Infinera Spares Management – 4 Hour Spares Arrival Maintenance Service is available only for those cities and/or zip/postal codes specified on the Infinera then-current service coverage map. Service coverage outside of this range shall be mutually agreed upon on a case-by-case basis.
If the Ordering Activity purchases the Infinera Spares Management - 4 Hour Arrival Maintenance Service for equipment following expiration of the warranty period, it must also purchase an Extended Hardware Warranty for a concurrent duration.
- This Service does not include on-site engineer dispatch service(s).
- The Infinera Spares Management – 4 Hour Spares Arrival Service shall not apply to customer laboratory equipment, unless otherwise mutually agreed upon.
- The Infinera Spares Management – 4 Hour Spares Arrival Service must be purchased for the Ordering Activity's entire network (excluding customer laboratory equipment), or as otherwise mutually agreed upon.

Ordering Activity Responsibilities

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- Provide a site identification or site contact number.
- Ensure that authorized staff for operation and maintenance is available during the entire support period to provide Infinera Customer Support with information (e.g., model, serial number, current failure symptoms) upon request.
- Provide Infinera with a complete listing of all Covered Products and their deployed locations. The information must include the FRU type, serial number, and site location. The Ordering Activity is further responsible for providing Infinera with updates whenever this information changes. Infinera must have up-to-date information on Ordering Activity inventory at all times in order to maintain the 4 Hour arrival SLA provided by this service. Notify Infinera of any additions, relocations or changes to equipment via Infinera support hotline (877-INF-5288) or email techsupport@infinera.com.courses on the Product.

12.

6. INFINERA FIRST LINE MAINTENANCE – 4 HOUR ENGINEER ARRIVAL

The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service provides an on-site Technical Support Engineer (TSE) to remove a defective module and install its replacement, or to facilitate fault isolation that cannot be performed remotely. The TSE will arrive at the Ordering Activity site within 4 hours of Infinera confirmation that a dispatch is required. This Service is available on a 24 hours a day, 7 days a week, 365 days a year (24x7x365) basis. This Service provides:

- Access to the Infinera Ordering Activity Support Technical Assistance Center (TAC) on a 24x7x365 basis to request dispatch of an engineer. If it is determined by Infinera that a module needs to be returned to Infinera, or that further on-site resolution is required, an Infinera TSE will be dispatched.
- An Infinera TSE will arrive at the designated Ordering Activity site within 4 hours of Infinera's dispatch confirmation.

Assumptions and Additional Conditions

- Replacement modules are not included with this Service. However, the above Service can be combined with the purchase of an Infinera Spares Management Service, which is sold separately under an additional SOW.
- Infinera shall provide FLM Service in accordance with an agreed upon schedule once the following occur (i) acceptance of a purchase order for the FLM Service and (ii) and the Ordering Activity has provided a complete list of its sites to be covered by this service (addresses/GPS coordinates consistent with the delivery locations for the Product).
- The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service is available only for those cities and/or zip/postal codes specified on the Infinera then-current service coverage map. Service coverage outside of this range shall be mutually agreed upon on a case-by-case basis.
- The determination as to whether or not the dispatch of a TSE is necessary will be made by Infinera at its discretion. The Infinera First Line Maintenance - 4 Hour Engineer Arrival Service is subject to geographic restrictions. Please refer to the Infinera 4 hour FLM coverage map for details, or talk with an Infinera Sales Representative.
- The Infinera First Line Maintenance – 4 Hour Engineer Arrival Service must be purchased for the Ordering Activity's entire network, or as otherwise mutually agreed upon.

Ordering Activity Responsibilities

- Provide Infinera with a complete listing of all products covered by this Service, including serial numbers, in order to properly establish and track service entitlement.
- Provide site identification badge and on-site Ordering Activity staff contact information, for the TSE.
- Ensure that authorized staff for operation and maintenance is available during the entire support period, to provide Infinera with information (e.g., model, serial number, current failure symptoms) upon request.
- Notify Infinera of any additions, changes and relocations of equipment covered under this Service.

13.

7. Infinera Technical Training

The Infinera Learning Experience is a comprehensive suite of training courses and modules to train Ordering Activity personnel in the installation, administration, maintenance, and operations of the Infinera Digital Optical Network. Infinera utilizes the latest in learning technologies and methodologies to create a personalized learning environment, providing timely and relevant information in easily accessible formats.

Infinera offers its training courses in two formats:

- **Classroom Learning Format:** Infinera offers all of its courses in a classroom learning format with extensive hands-on labs on the latest Infinera equipment. Infinera has classroom locations at headquarters in Sunnyvale (CA, U.S.), London, and Hong Kong. Infinera can also deliver most class types at the Ordering Activity location.
- **E-Learning Format:** Infinera also offers many courses, videos, and tutorials in e-learning format. Most of our instructor-led courses require pre-requisites which are completed through e-learning. Elearning content is accessed through a compatible web browser to Infinera's Learning

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Management System. Ordering Activity can choose to access the content on per course basis or an annual subscriptions. The annual subscription allows access to all Infinera Customer e-learning content for one year from purchase date.

Learning Management

The Infinera Learning Experience includes customer learning management. Our 24x7 online system is accessible through a compatible browser and will keep track of all aspects of the training experience. Each Ordering Activity and each student will have their own training record where Infinera will maintain training paths, recommended curriculums, completion status, exams, certifications, exams, and feedback.

The system will supply the necessary reports for managers to track the progress of their staff. Training Credits

The Infinera Learning Experience uses a “training units” model. In its simplest form, Ordering Activities buy training units which are good for one year from the date of purchase, then use the training units to purchase various training classes. The primary advantages of buying training units instead of classes directly in \$USD are flexibility and price protection. There are two types of training units – one type is for eLearning, and the other type is for instructor-led.

Infinera DTN-X Training Course Descriptions – Core Courses

- **DTN-X Overview Course** – This course is primarily delivered as an e-learning offering and can be completed at the student's own pace. The course provides an overview of Infinera Digital Optical Network architecture, network applications, and product descriptions. This will include topics such as DTN-X and Optical Line Amplifier system architecture, hardware overview, signal flow, and an overview of the architecture, features, and capabilities of the Infinera Graphical Node Manager (GNM) and Infinera Digital Network Administrator (DNA). This class is also available per request in an instructor – led format. In a classroom, the minimum class size is 4 and maximum class size is 25.
- **DTN-X Field Engineering** – This three-day hands-on technical training course focuses on field personnel and training them to be able to turn up and test the DTN-X product line. The course will provide an overview describing the procedures to commission a Switching Transport Chassis (XTC). This will include such topics as commissioning a GNE, an SNE, an Expansion Chassis, fiberling a digital span, provisioning a circuit, and interpreting alarms. This course has a prerequisite requirement of DTN-X theory and hardware description to be completed via e-learning. This course, combined with the e-learning will prepare a student for field engineering certification exam. The minimum class size is 4 and recommended maximum class size is 8. Because this course is very much hands-on in a lab environment, this course is only available at an Infinera facility in Sunnyvale, London, or Hong Kong.
- **DTN-X NOC Engineering** – This three-day hands-on technical training course will provide an overview describing the procedures for operations, administration, maintenance, and provisioning of the DTN-X. This will include use of DNA, alarm descriptions, troubleshooting, circuit pack configuration, querying and provisioning a working network element, understanding performance monitoring and alarm clearing techniques. Students will receive hands-on exercises for three days for OAM&P capabilities of the DTN-X. This course has a prerequisite requirement of DTN-X theory and hardware description to be completed via e-learning. This course, combined with the e-learning will prepare a student for NOC engineering certification exam. The minimum class size is 4 and the maximum class size is 12.

Infinera DTN-X Training Course Descriptions – Additional Courses

- **DNA Fundamentals** – This two-day hands-on technical training is designed for NOC Engineers who carry out surveillance and troubleshooting of the DTN/DTN-X network using Digital Network Administrator (DNA).
- **Network Customer Service** – This two-day hands-on technical training is designed for Ordering Activity Technical Support Engineers who rectify customer reported circuit issues on the DTN and DTN-X network.
- **DTN-X Provisioning** – This two-day hands-on technical training is designed for Service Delivery Engineers who design and provision services in the DTN/DTN-X network.
- **DTN-X Deployment** – This three-day hands-on technical training is designed for Deployment Engineers performing commissioning and configuration activities from a remote location using Digital Network Administrator (DNA) and Graphical Node Manager (GNM) who adds capacity on the network, confirms power levels, set thresholds, set up cross connects for trib to trib testing and ensure successful deployments of new nodes.
- **Site Engineering** – This four-day hands-on technical training is designed for Site Engineers who carry out site surveys and create work order packages for field techs to install and commission network elements and module adds. This training course will show the student how to configure a node, including addresses for the DCN, GMPLS and OSC, configure Line Modules and Band Mux Modules (BMMs), make all physical connections and other configuration options as well as performing software upgrades. Hands on exercises are done using Graphical Node Manager (GNM).
- **First-Line Maintenance** – This two-day hands-on technical training is designed for engineers who carry out first line maintenance activities. This training course will show the student how replace modules, retrieve logs, back up databases and perform other activities when given remote instructions and guidance from the Network Operations Center.
- **Network Planning** – This two-day hands-on technical training is designed for Network Planners who design the network with Infinera assistance. This training course will show the student how to manage network capacity, how to add and configure Line Modules and Band Multiplexing Modules (BMMs), plan and design node administration such as DCN and GMPLS IP addresses and NTP configuration, read optical power measurements, given an introduction to Digital Network Administrator (DNA) including in depth lessons on critical tools such as Digital Link Viewer (DLV) and Digital

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Bandwidth Manager (DBM). Students will also be given lectures to fully understand the signal flow through the DTN/DTN-X including explanations on Forward Error Correction (FEC) and Q-Values.

Infinera Training Course Descriptions – Legacy Products (DTN/ATN) DTN and ATN courses are available upon request.

Training Course Recommendations by Role

Infinera recommends the following training courses, by student role:

Train Personnel for...	Detailed Description	Recommended Course(s)...
Technical Product Overview Only	For any staff requiring an introductory overview to the Infinera Digital Optical Network system.	Infinera DTN/ATN Product Overview
Installation and Commissioning	For staff that undertake the installation and commissioning of the equipment.	Infinera DTN/ATN Turn Up and Test
Maintenance and Field Operations	For staff that undertake maintenance of the equipment. This course needs to cover the details of the methods of operation, routine maintenance tasks, and fault finding	Infinera DTN/ATN Turn Up and Test Certification
	For staff that undertake the operation and maintenance of the transmission equipment on fields, directed by NOC personnel.	Infinera DTN/ATN OAM&P Certification
Network Management (i.e. NOC)	For staff who undertake the monitoring of the network from a central location, e.g. Network Operating Center (NOC), or similar.	Infinera Management Suite (DNA) Overview + Infinera DTN/ATN Troubleshooting
Configuration Management	For staff that undertake the remote provisioning of equipment using the Network Element Management System.	Infinera DTN/ATN OAM&P Course
Network Administration	For the network administrator who is in charge of managing servers for backup/restore, defining user's profiles and password, managing security and connection to the Data communication network; this course includes all applications and features of EMS/NMS	Infinera Management Suite (DNA) Overview

Network Planning	For network planning staff responsible for network modeling, planning and design.	Infinera Network Planning System Training (available through your Infinera Sales Engineer) + Infinera Management Suite (DNA) Overview

Scheduling Courses

Infinera flexibly schedules and provides its courses based on Ordering Activity request, and therefore there is no “set schedule” for our course offerings. To schedule an Infinera course, simply submit your training request to the Infinera Global Customer Technical Assistance Center (via phone, email, or Infinera Customer Web Portal), and a training specialist will work with you to schedule the appropriate courses.

14. Exhibit C SOFTWARE SUPPORT

Conditions to Provision of Services. During the Software Warranty Period, Infinera shall make available the following services to Ordering Activity for the Software:

15. 1. HELP DESK SUPPORT

Infinera shall provide a service desk (contacted through a telephone help line) to assist Ordering Activity in obtaining a quick response to network faults or troubleshooting questions (the “Technical Assistance Center” or “TAC”). The service desk shall log and track trouble tickets for reported faults within the scope of 3rd Line Support. The TAC help desk will be available 24 hours per day, 7 days per week and every day of the year (24 x 7 x 365). The number for the Infinera’s Technical Assistance Center is:

877-INF-5288 (463-5288) / Main 408-572-5200 email:
techsupport@infinera.com fax: 408-572-5343

Additional access phone numbers for Infinera’s Technical Assistance Center:

Direct within U.S.	1.408.572.5288
Toll-free within U.S.	1.877.463.5288
Toll-free within Australia	0011.8004634.6364
Toll-free within Benelux	00.800.4634.6372
Toll-free China Netcom	00.800.4634.6364
Toll-free China Telcom	00.800.4634.6364
Toll-free within Denmark	00.800.4634.6364
Toll-free within Finland	990.800.4634
Toll-free within France	00.800.4634.6372
Toll-free within Germany	00.800.4634.6372
Toll-free within Greece	00800.1809.204.3766
Toll-free within India	00.800.100.4014
Toll-free within Indonesia	001.803.015.204.3768
Toll-free within Italy	00.800.6300.6400

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Toll-free within Japan	010.800.4634.6372
Toll-free within Mexico	001.855.587.7440
Toll-free within Spain	00.800.4634.6364
Toll-free within Sweden	00.800.4634.6364
Toll-free within Switzerland	00.800.4634.6364
Toll-free within U.K.	00.800.4634.6372

16.

2. SERVICE ESCALATION PROCEDURES

2.1 Defect Severity Levels. Defects (classified as Critical, Major, or Minor defects) for all Products are defined in this Section. The classification and reclassification of the defect level shall be at the reasonable discretion of Infinera; provided, however, that such classifications and reclassifications shall be in accordance with the definitions set forth in this Section. In the event a defect is subsequently reclassified to a higher severity level, the Service Restoration time period shall begin at the time the defect is reclassified.

- (a) Critical Defects. "Critical Defects" means conditions under which the Product is inoperative and Ordering Activity's inability to use the Product creates an emergency situation with respect to Ordering Activity's business operations. This condition generally is characterized by a loss of network connectivity or service affecting a major customer or multiple other customers due to Product failure and requires immediate restoration or correction.
- (b) Major Defects. "Major Defects" means conditions under which the Product is usable by Ordering Activity, with limited functions, but creates a manageable situation with respect to Ordering Activity's business operations. The condition is not critical to overall Ordering Activity operations and does not severely restrict such operations.
- (c) Minor Defects. "Minor Defects" means conditions under which the Product is usable and the condition does not adversely affect Ordering Activity's operations. These problems are those resulting in a minor failure that is cosmetic or de minimis in nature.

2.2 Initial Response; Service Restoration; Defect Resolution. With respect to the terms utilized in the table below, the following definitions shall apply:

"Defect Resolution" is the time elapsed from Ordering Activity's report of a defect to the time Infinera provides a final correction or modification of the Product that corrects the root cause of the defect.

"Initial Response" means the time it takes from Ordering Activity's initial report of the defect until Ordering Activity speaks with the appropriate Infinera subject matter expert as set forth in the escalation table below. The measurement of Initial Response time does not apply when a Ordering Activity call is related to a previously reported defect.

"Service Restoration" means the time it takes Infinera to apply a functional resolution to the reported defect, meaning Infinera provides Ordering Activity with a temporary fix or workaround that solves a reported defect and that can be used by Ordering Activity with minimal inconvenience and minimal impact on Ordering Activity's business operations.

Infinera shall exercise continuous and uninterrupted efforts, twenty-four (24) hours a day, seven (7) days a week, to achieve Service Restoration for any Critical Defects as soon as possible after reported by Ordering Activity. Without limiting the generality of the foregoing, the Parties agree that the time frames for Initial Response, Service Restoration and Defect Resolution set forth in the following table represent the estimated time limit for Initial Response, Service Restoration and Defect Resolution and Infinera shall use all reasonable efforts to achieve time frames that are better than the time frames set forth below.

Severity Level	Initial Response	Service Restoration / Work Around	Defect Resolution
Critical Defect1	Immediate (15 minutes)	4 hours	20 days for a patch (without hardware/firmware design change); 180 days (with hardware/firmware design change) in next Maintenance Release

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Major Defect	30 minutes	24 hours	45 days for a patch (without hardware/firmware design change); 180 days (with hardware/firmware design change) in next Maintenance Release
Minor Defect	1 hour	N/A	Next Maintenance Release

1 With respect to all Critical Defects, Infinera shall provide hourly status updates to Ordering Activity until Service Restoration has been achieved.

2.3 Escalation of Unresolved Defects within Infinera. For all defects reported by Ordering Activity, Ordering Activity shall have the right to require Infinera to escalate Ordering Activity's defect to the next appropriate tier in the applicable Infinera support organization. Such escalation is not intended to and shall not diminish Infinera's obligations to restore and resolve defects within the applicable time frames. In addition, Infinera shall observe the following management notification procedures with respect to all unrestored Critical Defects:

- (a) Service Interruption. Upon Ordering Activity's report to Infinera of the existence of a Critical Defect, Infinera shall notify Infinera's Tier 3 Support via an Infinera technical support engineer and any additional Infinera personnel as needed by Product. If Service Restoration with respect to a Critical Defect has not been achieved within thirty (30) minutes after the defect is reported by Ordering Activity to an Infinera technical support manager, as applicable, Infinera shall notify the appropriate Infinera supervisory management of the unrestored condition. If Service Restoration has not been achieved within one (1) hour after the defect is reported, the next higher level of Infinera supervisory management shall be notified of the unresolved condition.
- (b) Extended Service Interruption. Upon the occurrence of an Critical Defect that: (i) affects multiple customers and Service Restoration has not been achieved within thirty (30) minutes following Ordering Activity's report to Infinera of such Critical Defect; or (ii) affects special facilities, such as 911, governmental facilities, military, commercial airports, etc.; or (iii) includes media involvement (an "Extended Service Interruption" or "ESI"), then in addition to the Infinera personnel identified in subsection (a) above, Infinera shall notify Infinera's Vice President of Service and Support and the Vice President of Hardware Engineering or Vice President of Software Engineering, depending on the nature of the defect, as applicable. Such notification shall be made by means of Infinera's call center via telephone, facsimile or e-mail commencing within sixty (60) minutes following Ordering Activity's report to Infinera of the Critical Defect and concluding within thirty (30) minutes thereafter.

Technical and management escalation contact information for the persons set forth in this Section are as follows:

Level	Name	Position	Phone #	Email
Tier3 Support	24/7 TAC	Technical Support Engineer	1-877-463-5288	techsupport@infinera.com
Technical Support Director	Charlie Plitt	Director, Technical Assistance Center, Service and Support	1-877-463-5288	cplitt@infinera.com
VP, Service and Support, Office of the Chief Operating Officer	Lonny Orona	Vice President, Global Service and Support	1-877-463-5288	lorona@infinera.com

2.4 Measurement of Response, Restoration and Resolution of Defects. Infinera shall provide to Ordering Activity a report that summarizes the percentage of defects responded to, restored and resolved within the time frames specified in this Section 2.

2.5 Reviews. As part of its ongoing support services, Infinera shall provide Operational reviews and service reports within mutually agreed to time frames (but no less than quarterly), which reports shall include, without limitation: (i) a detailed summary and status of all defects reported by Ordering Activity; (ii) the number of remote accesses by Infinera into Ordering Activity's systems; (iii) the number of Maintenance and Support Services-related on-

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site visits; (iv) Maintenance Releases sent and applied to Products; (v) analysis of hardware and Software release schedules; and (vi) an analysis of RMA requests and fulfillment of same by Infinera.

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

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

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- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

INFORELIANCE CORPORATION

INFORELIANCE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Attachment A – InfoReliance Corporation

LICENSE TERMS AND CONDITIONS

1. DEFINITIONS. Certain capitalized terms used in this Agreement shall have the meanings set forth or cross-referenced below.

1.1 “Authorized Systems” shall in any case be limited to computer systems owned, operated or under the supervision and control of Licensee, and such computer systems means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers, portable workstations connected or connecting to the server(s) or network or mobile/smart phone.

1.2 “Authorized User” shall have the meaning set forth in Section 2.3.

1.3 “Confidential Information” shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, the Company Software shall be considered Company's Confidential Information.

1.4 “Company Software” shall mean the machine-readable, executable version of Company's proprietary application software licensed by Company to Licensee, herein *CloudHASH Security Suite*, *CloudHASH Security Rapid Query* and, under the license purchased by Licensee, including Updates and Upgrades.

1.5 “Documentation” shall mean Company's standard user manuals and/or related documentation generally made available to licensees of the Company Software.

1.6 “Support” means the support services offered by Company for the support and maintenance of the Software. During the first year of the Term, without additional charges, Licensee will be granted Support by: (i) being provided rights to Updates and Upgrades; and (ii) being provided both a telephone number and email contact address for contact to the Company support personnel. Licensee is not granted further rights to any Support, and Licensee has no further right to Support, including without limitation any further Updates and Upgrades or access to Company support personnel (or continued use of the telephone number and email contact address for contact to the Company support personnel) unless Licensee has applied and/or installed all Updates and Upgrades offered by the Company. (Support periods under the GSA Schedule licenses require certain limits, including in autorenewal, and, as a consequence, future Support acquisition under the GSA Schedule may require an execution of a renewal agreement for that Support at that time.)

1.7 “Updates” are related to Company Software content and include without limitation all DATs, signature sets, policy updates, and database updates for the Company Software, which are made generally available to Company's customer base as a part of the Company Software and which are not separately priced or marketed by Company.

1.8 “Upgrade” means any and all improvements in the Company Software, which are made generally available to Company's customer base as a part of the Company Software and which are not separately priced or marketed by Company.

2. LICENSE AND USAGE OF SOFTWARE.

2.1 License Usage. Subject to the terms and conditions of this Agreement and applicable ordering document, Company hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable right and license during the Term to install and operate the Company Software on one (1) Authorized System per each individual license acquired under the GSA Schedule, solely in accordance with applicable Documentation provided by Company, solely for use by Authorized Users, and solely for Licensee's internal business purposes.

2.2 Documentation License. Subject to the terms and conditions of this Agreement and applicable ordering document, Company hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable right and license during the Term to make copies of the Documentation provided by Company, solely for use by Authorized Users in connection with the exercise of rights granted in Section 2.1.

2.3 Authorized Users. For purposes of this Agreement, the term “**Authorized Users**” shall mean any individual employee, agent or contractor of Licensee accessing or using the Company Software solely on behalf and for the benefit of Licensee in the operation of Licensee's business. Licensee acknowledges and agrees that it shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Licensee, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Licensee. Licensee shall undertake reasonable efforts to make all Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User's use of the Company Software, and shall cause Authorized Users to comply with such provisions.

2.4 Reserved.

2.5 Ownership of Company Software Subject to the rights granted in Sections 2.1 and 2.2, Company retains all right, title and interest in and to the Company Software, the Documentation and associated intellectual property rights, and Licensee acknowledges that it neither owns nor acquires any rights in any of the foregoing not expressly granted by this Agreement. Licensee further acknowledges that Company retains the right to use the Company Software for any purpose in Company's sole discretion, and Company reserves all rights not expressly granted in this Agreement.

2.6 General Usage Restrictions.

(a) Licensee will not use the Company Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement and applicable ordering document.

(b) Without limiting the generality of the foregoing, Licensee will not (i) authorize or permit use of the Company Software or Documentation by persons other than Authorized Users; (ii) market or distribute the Company Software or Documentation; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Licensee's rights under the licenses granted in Sections 2.1 and 2.2;

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(iv) use the Company Software in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify the Company Software or Documentation, except with the prior written consent of Company; (vi) combine or integrate the Company Software with hardware, software or technology not provided to Licensee by Company hereunder, provided that use of the standard application programming interface of the Company Software, as contemplated in the Documentation, will not be considered to violate the foregoing; (vii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Company Software is compiled or interpreted, and Licensee hereby acknowledges that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code; or (viii) make copies of the Company Software or Documentation other than a reasonable number of copies solely for archival purposes.

(c) Licensee shall undertake all measures necessary to ensure that its use of the Company Software and the Documentation complies in all respects with any contractual or other legally binding obligations of Company to any third party, provided that Company has notified Licensee with respect to any such obligations. Licensee shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use by Company of the Company Software or the Documentation.

(d) Licensee shall undertake all measures necessary to ensure that its use of the Company Software and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Company Software or the Documentation, including, without limitation, by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal government of the United States of America. Licensee acknowledges that Company makes no representation or warranty that the Company Software may be exported without appropriate licenses or permits under applicable law, or that any such license or permit has been, will be or can be obtained.

(e) Licensee shall duplicate all proprietary notices and legends of Company and its suppliers or licensors upon any and all copies of the Company Software and Documentation made by Licensee. Licensee shall not remove, alter or obscure any such proprietary notice or legend.

2.7 Reserved.

3. RESERVED.

4. CONFIDENTIALITY RIGHTS AND OBLIGATIONS.

4.1 Reserved.

4.2 Mutual Confidentiality Obligations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Trade Secrets Act, 18 U.S.C. 1905, each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

4.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 shall not apply to Confidential Information that: (i) is publicly available or in the public domain at the time disclosed other than by breach of this Agreement; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully received by the recipient from persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto prior to its first receipt from the disclosing Party under this Agreement; (v) is independently developed by the recipient without access to the Confidential Information of the disclosing Party; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (A) As required by law; (B) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given notice to the other Party and shall allow the Disclosing Party to obtain confidential treatment or to limit the scope of the required disclosure or have made its own reasonable effort to obtain a protective order in such form acceptable to the Disclosing Party; or (C) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

5. WARRANTIES; DISCLAIMERS.

5.1 Representations and Warranties. Each Party hereby represents and warrants: (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. Company warrants that the SOFTWARE will, for a period of sixty (60) days from the date of receipt by Licensee, perform substantially in accordance with Company's documentation accompanying the SOFTWARE. In the event of a breach of this warranty, Licensee's exclusive remedy shall be the repair or replacement of the SOFTWARE by Company at no increase in price. Notwithstanding the foregoing, COMPANY may elect to provide a refund in lieu of replacement or repair.

5.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE COMPANY SOFTWARE, DOCUMENTATION AND ANY OTHER INFORMATION OR MATERIALS OTHERWISE PROVIDED IS PROVIDED "AS IS" WITH NO OTHER WARRANTY PROVIDED. NO WARRANTY IS MADE BY COMPANY ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. COMPANY DOES NOT WARRANT THAT THE COMPANY SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE COMPANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ACKNOWLEDGES THAT COMPANY'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF LICENSEE ONLY.

5.3 Reserved.

5.4 Essential Basis. The Parties acknowledge and agree that the disclaimers set forth in this Section 5 form an essential basis of this Agreement, and that, absent any of such disclaimers, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

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- 6. **RESERVED.**
- 7. **RESERVED.**
- 8. **GENERAL PROVISIONS.**
- 8.1 **Reserved.**

8.2 **Independent Contractors.** In making and performing this Agreement, Licensee and Company act and shall act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

Reserved.

- 8.3 **Reserved.**
- 8.4 **Reserved.**

8.5 **No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

8.6 **Reserved.** 8.7 **Reserved.**

8.8 **Reserved.**

8.9 **Reserved.**

8.10 **U.S. Government End-Users.** Each of the components that constitute the Company Software and Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Company Software with only those rights set forth herein.

8.11 **Reserved.**

8.12 **Reserved.**

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

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

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
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- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or

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any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

INTEL SECURITY PUBLIC SECTOR, INC.

INTEL SECURITY PUBLIC SECTOR, INC. LICENSE, WARRANTY AND SUPPORT TERMS

INTEL SECURITY End User License Agreement

BY EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT COMPANY OR LEGAL ENTITY TO THESE TERMS.

IF YOU DO NOT AGREE TO THESE TERMS:

- **DO NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THIS SOFTWARE, AND**
- **PROMPTLY RETURN THIS SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED THEM**

1) Definitions.

- a) "Authorized Partner" means any of Intel's distributors, resellers or other business partners that are authorized by Intel in writing to sell Support or the Software license rights granted under this Agreement.
- b) "Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
- c) "DATs" means detection definition files, also referred to as signature files, that contain the code(s) anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
- d) "Grant Letter" means a confirmation notice letter issued by Intel to you, confirming the Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below).
- e) "High Risk System" means a device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High Risk Systems may be required in critical infrastructure, industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.
- f) "Intel" means (i) Intel Americas, Inc., with offices located at 2200 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States (except as provided in subclause (vi), below), Canada, Mexico, Central America, South America, or the Caribbean, (ii) Intel Corporation UK Limited, with its registered offices located at Pipers Way, Swindon, Wiltshire SN3 1NJ, United Kingdom, if the Software is purchased in Europe, the Middle East, or Africa, (iii) Intel Semiconductor (US) LLC, with a trading address located at 69/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania, (iv) Intel Kabushiki Kaisha, with offices located at Kokusai Building 5F, 1-1, Marunouchi 3-chome, Chiyoda-ku, Tokyo, 100-0005, Japan, if the Software is purchased in Japan, (v) Intel Trading (Shanghai) Co., Ltd., with a trading address located at Room IIA/B, First Floor, No. 999 Ying Lun Road, Waigaoqiao Free Trade Zone, Pudong, Shanghai, 200131 China, if the Software is purchased in China (in RMB), or (vi) Intel Security Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.
- g) "Software" means the Intel software program in object code format (i) licensed from Intel and purchased from Intel or its Authorized Partners, or (ii) embedded in or pre-loaded on Intel Security- or Intel Security Public Sector, Inc.-branded hardware equipment purchased from Intel or its Authorized Partners, in each case including Upgrades and Updates that you install during the applicable Support period.
- h) "Standard" means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public. "Standards" includes "de facto" technology or technical standards that are initially introduced by one or more entities, which then become more widely adopted by others in other products; includes features characterized as "mandatory," "optional," and their equivalents; and includes versions characterized as "draft." Examples of Standards include GSM, GPRS, EDGE, CDMA, UMTS, LTE, WCDMA, WiFi (also known as 802.11[x]), Bluetooth (also known as 802.15.1), and de-facto standards such as HTML or VHS (video). Examples of entities that promulgate, distribute, specify or publish Standards include the IEEE, ITU, 3GPP, ETSI, and the USB Implementers' Forum.
- i) "Subsidiary" means any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.
- j) "Support" or "Technical Support" means the support services offered by Intel for the support and maintenance of the Software and the Intel Security Public Sector, Inc.- or Intel Security-branded hardware equipment as further specified in the Intel Technical Support and Maintenance Terms.

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- k) "Updates" are related to content of the Software, including, without limitation, all DATs, signature sets, policy updates, and database updates for the Software, and that are made generally available to Intel's customer base as a part of purchased Support and which are not separately priced or marketed by Intel.
- l) "Upgrade" means any and all improvements in the Software that are made generally available to Intel's customer base as part of purchased Support and which are not separately priced or marketed by Intel.

2) License Grant; Proprietary Rights.

- a) Subject to the terms and conditions of this Agreement, Intel hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, to use the Software includes to download, install, and access the Software) listed in the Grant Letter solely for your own internal business operations. You are not granted rights to Updates and Upgrades unless you have purchased Support (or a service subscription granting rights to Updates and Upgrades).
- b) The Software, including, without limitation, its object code and source code, whether or not provided to you, is strictly confidential to Intel. Intel (or its licensors) owns exclusively and reserves all – and you may not exercise any – right, title, and interest in and to the Software, including, without limitation, all intellectual property rights in and to the Software, except to the extent of the limited Software use license granted to you in this Agreement. This Agreement is not an agreement of sale, and no title, intellectual property rights, or ownership rights to the Software are transferred to you pursuant to this Agreement. You acknowledge and agree that the Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot-fixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy and database updates and other updates in, of, or to the Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and proprietary property of Intel, having great commercial value to Intel.

3) Copy and Use Terms.

- a) Product Entitlement: The use of the Software depends on the licenses purchased (e.g. nodes) and is subject to the Product Entitlement Definitions set forth at <http://www.Intel Security Public Sector, Inc..com/us/resources/legal/Intel Security Public Sector, Inc.-product-entitlement-definitions.pdf> on the applicable date of your Grant Letter.
- b) Multiple Platforms/Bundles: If the Software supports multiple platforms or if you receive the Software bundled with other software, the total number of devices on which all versions of the Software is installed may not exceed your product entitlement. Certain Software licensed as part of a suite-based Intel product may also require the purchase of a separate Intel server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.
- c) Term: The license is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter, otherwise the licenses shall be perpetual.
- d) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
- e) Subsidiaries; Managing Parties: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You also may permit a third party with which you enter into a contract to manage your information technology resources ("Managing Party"), provided that (i) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement and (iii) you provide Intel with written notice that a Managing Party will be using the Software on your behalf. You shall be responsible for each Subsidiary's and Managing Party's compliance with or breach of the terms of this Agreement.
- f) General Restrictions: You may not, and you may not cause or allow any third party to: (i) decompile, disassemble or reverse-engineer the Software; or create or recreate the source code for the Software; (ii) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Software and Documentation made by you; (iii) lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise; (iv) modify, adapt, tamper with, translate, or create derivative works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Software or to compete with Intel; (v) except with Intel's prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (vi) attempt to do any of the foregoing. You may not run or operate the Software in a cloud, Internet-based computing, or similar on-demand computing environment unless your Grant Letter specifically provides such.

4) Technical Support and Maintenance.

The Intel Technical Support and Maintenance Terms and Conditions apply if you have purchased Support. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support. You will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or your internal policies or guidelines in order to disclose to Intel, in connection with Intel's performance of Support or otherwise under this Agreement, applicable personally identifiable information, data, and material.

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- a) Limited Warranty: Intel warrants that, for a period of sixty (60) days from the purchase date ("Warranty Period"), the Software licensed hereunder will perform substantially in accordance with the Documentation (the "Limited Warranty").
- b) Exclusive Remedy: In case of any breach of the above Limited Warranty, as your exclusive remedy and Intel's entire obligation and liability Intel will (i) repair or replace the Software or (ii) if such repair or replacement would in Intel's opinion be commercially

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unreasonable, upon Intel's receipt of your written representation and promise that you have removed all instances of the Software and will not use the Software, refund the price paid by you for the applicable Software.

- c) **Exclusion of Warranty:** THE ABOVE LIMITED WARRANTY WILL NOT APPLY IF: (i) THE SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTATION, (ii) THE SOFTWARE OR ANY PART THEREOF HAS BEEN MODIFIED BY ANY ENTITY OTHER THAN INTEL OR (iii) A MALFUNCTION IN THE SOFTWARE HAS BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY INTEL.
- d) **Disclaimer:** Except for the limited warranty set forth above, THE SOFTWARE IS PROVIDED "AS IS" AND INTEL MAKES NO REPRESENTATIONS OR WARRANTIES, AND INTEL DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITING THE FOREGOING, INTEL MAKES NO WARRANTY, REPRESENTATION, OR GUARANTEE AS TO THE SOFTWARE'S USE OR PERFORMANCE AND DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL-SAFE, UNINTERRUPTED, OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
- e) **High Risk Systems Terms:** The SOFTWARE MAY FAIL AND IS not designed, developed, TESTED, or intended TO BE RELIABLE in the context of High Risk SYSTEMS. without limiting anything else, Intel has no responsibility for, claims, suits, demands, and proceedings alleging, claiming, seeking, or asserting, any liability, loss, obligation, risk, cost, damage, award, penalty, settlement, judgment, fine, or expenses (including attorneys fees) arising from or in connection with your use of the software on or in a high risk system, including, without limitation, those that (i) could have been prevented by deployment of fail-safe or fault-tolerant features to the high risk system, (ii) are based on a claim, allegation, or assertion THAT THE FUNCTIONING OF THE HIGH RISK SYSTEM depends or depended on the functioning of the software or that the FAILURE OF the software CAUSED A High Risk SYSTEM TO FAIL.

6) Limitation of Remedies and Damages.

- a) Under no circumstances and under no legal theory, whether in tort, NEGLIGENCE, contract or otherwise, shall either party be liable to the other UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER for any indirect, special, incidental, PUNITIVE, EXEMPLARY, consequential, or EXTRA-CONTRACTUAL damages OF ANY KIND, loss of goodwill, loss of PERSONNEL salaries, LOST PROFITS OR REVENUE, DAMAGES DUE TO work stoppage and/or computer failure or malfunction, and/or costs of procuring substitute software or services, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.
- b) REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT AND/OR ANY OTHER LEGAL THEORY, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER EXCEED THE AMOUNT OF TOTAL FEES PAID OR PAYABLE BY YOU FOR THE SOFTWARE GIVING RISE TO SUCH CLAIM DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.
- c) No provision of this Agreement shall exclude or limit in any way (i) the liability of either party for death or personal injury caused by negligence or (ii) your liability for excess usage of and/or any breach of Intel's intellectual property rights in the Software. Furthermore, nothing in the Agreement shall exclude or limit your liability for fraud or for any other matter for which liability cannot be excluded by law.
- d) The limitation of liability in this section IS based on the fact that END USERS use their computers for different purposes. Therefore, only you can implement back-up plans and safeguards appropriate to your needs in the event THAT an error in the Software causes computer problems and related data losses. For these business reasons, you agree to the limitations of liability in this section and acknowledge that without your agreement to this provision, the fee charged for the Software would be higher.

7) Intellectual Property Indemnity.

- a) **Indemnity:** Intel will indemnify, and, at its election, defend, you against claims asserted against you in any suit or proceeding for direct patent or copyright infringement, or for Intel's trade secret misappropriation, asserted against the Software, alone and not in combination with anything. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. § 516. Pursuant to 28 U.S.C. § 516, Intel cannot assume responsibility for or control of the litigation or any settlement negotiations, provided however, that Ordering Activity (i) agrees that any litigation or settlement negotiation shall not bind Intel; (ii) shall not impair Intel's own rights, defenses, or claims against the third party claimant; (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Intel, and (iv) shall in good faith reasonably cooperate and consult with Intel during the course of settlement negotiations and prosecution of the claim, and shall afford Intel free access to all communications and documentation with all parties, witnesses, and judicial or administrative bodies associated with such claim upon Intel's request. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any costs, fees, or damages arising from claims against Intel relating to use of the Software by Ordering Activity.
- b) **Exclusions:** Notwithstanding anything else in this Agreement, Intel has no obligation to indemnify or defend the following claims:
 - i) those asserted against elements or features in, or operation of, the Software attributable in whole or in part to Intel's inclusion of technology given by you to Intel, or in compliance with your designs, specifications or instructions, including inclusion of software supplied by you or included at your request;
 - ii) those asserted against the Software attributable in whole or in part to the modification of the Software by anyone other than Intel, or against the use of the Software, where that use is contrary to its specification or instructions for use;
 - iii) those asserted against the combination of the Software with anything;
 - iv) those based on an allegation that the Software implements or complies with, in whole or in part, as shipped or when used, a Standard;
 - v) those including an allegation that Intel, you, or the Software indirectly infringes, including by inducing or contributing to another's infringement;

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- vi) any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by you alleging patent infringement;
- vii) those including an allegation that the Software complies, in whole or in part, as shipped or when used, with any media decoding, encoding, or transcoding technology (such as, for example, through use of an audio or video codec); and
- viii) those asserting that you willfully infringed.
- c) Conditions: Intel's obligations under this Section 7 are conditioned on your prompt written notice to Intel of a claim and on your giving to Intel the right to control and conduct the defense and any settlement of the claim to the extent permitted under 28 U.S.C. § 516. You must fully and timely cooperate with Intel and provide Intel with all reasonably requested authority, information and assistance. Intel will not be responsible for any costs, expenses or compromise incurred or made by you without Intel's prior written consent.
- d) Defense, Settlement and Remedies: At its option, Intel will control and conduct the defense and any settlement of indemnified claims to the extent permitted under 28 U.S.C. § 516. Intel may, in its sole discretion and at its own expense: (i) procure for you the right to continue using the Software; (ii) replace the Software with a non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) upon your return of the Software to Intel, refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you.
- e) Personal Indemnity: The foregoing indemnity is personal to you. You may not assign, transfer or pass through this indemnity to any third party. You will notify all third parties that they must look solely to you for any indemnity for claims of infringement asserted against Software purchased from you.
- f) Exclusive Remedy: The foregoing states Intel's entire obligation and your exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Software.

8) Termination.

Without prejudice to your payment obligations, you may terminate your license at any time by uninstalling the Software. Upon such termination, you shall promptly return or destroy all copies of the Software and Documentation.

9) Additional Terms.

- a) Evaluation Software: If the Software has been identified by Intel as "Evaluation" Software, then the provisions of this section apply and shall supersede any other conflicting term of this Agreement. Your royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless otherwise agreed to in writing by Intel. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently, Evaluation Software is provided to you "AS IS" and Intel disclaims any warranty or liability obligations to you of any kind. Support is not available for Evaluation Software. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes and shall not be provided to any third parties. The restrictions described in Section 3(g) apply. If you fail to destroy the Evaluation Software after the evaluation period has expired, Intel may, at its discretion, invoice you in an amount equal to the Intel List Price for the Software. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, INTEL'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS UNDER THIS AGREEMENT RELATED TO EVALUATION SOFTWARE, OR IN CONNECTION WITH EVALUATION SOFTWARE, SHALL BE LIMITED TO THE SUM OF FIFTY (50) U.S. DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.
- b) Beta Software: If the Software that you have received has been identified by Intel as "Beta" Software, then the provisions of Section 9(a) above shall apply accordingly. Intel has no obligation to you to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by Intel, you will provide feedback to Intel regarding testing and use of the Beta Software, including error or bug reports. You agree to grant Intel a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute and make derivative works and incorporate the feedback into any Intel product at Intel's sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by Intel of a publicly released commercial version of the Beta Software, you agree to return or destroy all earlier Beta Software received from Intel.
- c) "Free" or "Open-Source" Software: The Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model ("FOSS Code"). FOSS Code components included with the Software are redistributed by Intel under the terms of the applicable FOSS Code license for such component; your receipt of FOSS Code components from Intel under this Agreement neither enlarges nor curtails your rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software's Documentation.

10) Notice to U.S. Government End Users.

The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11) Privacy and Collection of Personal or System Information.

- a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users' name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Intel products installed, Intel components, processes and services information, frequency and details of update of Intel components, information about third party products installed, extracts of logs created by Intel, usage patterns of Intel products and specific features, etc.) (collectively, "Data").
- b) The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users' computer

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network), to enable Intel to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.), and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

- c) By entering into this Agreement you and users agree to the Intel Privacy Policy on the Intel Security web site (www.intelsecurity.com) and to the collection, processing, copying, backup, storage, transfer and use of this Data by Intel and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of your or user's own as part of the Software, Support or service subscription. Intel will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the Intel privacy policy on the Intel Security web site (www.intelsecurity.com).

12) Audit.

Upon thirty (30) days' prior notice Intel may request, and you must provide, a Software-facilitated system-generated report (the "System Report") verifying your Software deployment. You acknowledge that the System Report is based on technological features of the Software that provide Software deployment verification. If the Software does not contain technological features that provide Software deployment verification, you will prepare and provide to Intel within the thirty (30)-day period an accurate Software deployment verification report for the Software. Intel will only request the System Report (or your prepared Software deployment verification report) one time per year and will not unreasonably interfere with the conduct of your business. However, if a System Report or your prepared Software deployment verification report identifies that you are out of compliance with the license terms of this Agreement, we will invoice you, and you will be required to purchase the additional licenses.

13) Export Controls.

You acknowledge that the Software is subject to U.S. and when applicable, European Union export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see "Export Compliance" at <http://www.Intel Security Public Sector, Inc..com/us/about-us.aspx>. Intel reserves the right to update this website from time to time at its sole discretion. If Intel receives notice that you are or you become identified as a sanctioned or restricted party under applicable law, then Intel will not be obligated to perform any of its obligations under this license if such performance would result in violation of the sanctions or restrictions.

14) Governing Law.

All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive laws of the Federal law of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

15) Confidentiality

Each party hereto acknowledges that by reason of its relationship with the other party hereunder, it may have access to confidential information and materials concerning the other party's business, technology, and/or products that is confidential to the other party ("Confidential Information"). Each party's Confidential Information is of substantial value to the party, which value could be impaired if such information was disclosed to third parties or used in violation of this Agreement. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each party agrees that it will not use in any way for its own account or the account of any third party, such Confidential Information, except as authorized under this Agreement, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither party may use the other party's Confidential Information except to perform its duties or exercise its rights under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving party at the time of access hereunder, (ii) becomes publicly available through no wrongful act of the receiving party, (iii) independently developed by the receiving party without benefit of the disclosing party's Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality or (v) is required to be disclosed by law, provided the party compelled to disclose the Confidential Information provides the party owning the Confidential Information with prior written notice of disclosure adequate for the owning party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both parties, upon termination of this Agreement or an applicable Addendum, each party will return the other party's Confidential Information.

16) Miscellaneous.

- a) Except for actions for non-payment or breach of Intel's proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than six (6) years after a party knew or should have known of the claim.
- b) Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.
- c) Intel may assign this Agreement, in whole, at any time subject to your prior written consent.; This Agreement, including all documents incorporated by reference, represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If you issue an order to an Authorized Partner or to Intel and the terms and conditions of the order conflict with the terms and conditions of (i) this Agreement or (ii) the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. No terms or conditions of any pre-printed or boilerplate purchase order of yours or other document of yours will govern the transactions contemplated by this Agreement. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of Intel. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by Intel. If any provision of this Agreement is held invalid, unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law and the remainder of this Agreement shall continue in full force and effect.
- d) All notices, requests, demands and determinations for Intel under this Agreement (other than routine operational communications) shall be sent to: the applicable entity address in Section 1(f) of this Agreement addressed to "Attention: Legal Department".

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INTEL SECURITY TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

Intel (as defined below) will provide Technical Support services in accordance with the following terms and conditions ("Support Terms").

1. Definitions.

- a. "**Authorized Partner**" means any of Intel's authorized distributors, resellers or other business partners.
- b. "**Cloud Product**" means Intel hosted and managed platforms, including any associated plug-ins and excluding Hardware and Software.
- c. "**Customer**" means the entity which has purchased Products and to which Intel provides Support.
- d. "**Grant Letter**" means a confirmation notice issued electronically by Intel to Customer confirming Products and Support purchased by Customer, including without limitation Customer's Support Level entitlement, the Grant Number, the Support Period and download details. For Cloud Products, Grant Letter includes relevant Service Activation Guides.
- e. "**Grant Number**" means a unique number communicated by Intel in a Grant Letter confirming a customer's Support entitlement and is required when accessing Support.
- f. "**Hardware**" means INTEL SECURITY PUBLIC SECTOR, INC. and INTEL SECURITY branded hardware equipment purchased from Intel or its Authorized Partners, but excludes any Software or other intangible products.
- g. "**Intel**" means (i) Intel Americas, Inc., with offices located at 2200 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States (except as provided in subclause (vi), below), Canada, Mexico, Central America, South America, or the Caribbean, (ii) Intel Corporation UK Limited, with its registered offices located at Pipers Way, Swindon, Wiltshire SN3 1NJ, United Kingdom, if the Software is purchased in Europe, the Middle East, or Africa, (iii) Intel Semiconductor (US) LLC, with a trading address located at 69/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania, (iv) Intel Kabushiki Kaisha, with offices located at Kokusai Building 5F, 1-1, Marunouchi 3-chome, Chiyoda-ku, Tokyo, 100-0005, Japan, if the Software is purchased in Japan, (v) Intel Trading (Shanghai) Co., Ltd., with a trading address located at Room IIA/B, First Floor, No. 999 Ying Lun Road, Waigaoqiao Free Trade Zone, Pudong, Shanghai, 200131 China, if the Software is purchased in China (in RMB), or (vi) Intel Security Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States..
- h. "**Product(s)**" means Intel's Software and Hardware product specified in a Grant Letter or Cloud Product purchased from Intel or an Authorized Partner.
- i. "**Support**", "**Technical Support**" or "**Technical Support and Maintenance**" means the support services for Intel Products purchased by Customer either from Intel or from Intel's Authorized Partner which are dependent on the Support Level purchased.
- j. "**Software**" means each Intel software program in object code format and components licensed by Intel or its Authorized Partners to Customer.
- k. "**Support Period**" means the effective time period for which the Customer has purchased Support that is confirmed in a Grant Letter or in the case of Cloud Products means the effective time period for which the customer has purchased the Cloud Product and has an active entitlement and valid account.
- l. "**Support Region**" means any one of the following five (5) regions: (i) North America, (ii) Europe, Middle East and Africa ("EMEA"); (iii) Asia Pacific ("APAC"); (iv) Japan, and (v) Latin America ("LTAM").
- m. "**Support Level(s)**" means the Intel Support offering purchased by Customer. Software and Hardware Support Levels are defined on datasheets available at:
<http://www.Intel Security Public Sector, Inc..com/us/support/support-benefits.aspx>
- n. "**Upgrade**" means any and all improvements in the Products which are made generally available to Intel's customer base as a part of purchased Support and which are not separately priced or marketed by Intel.
- o. "**Updates**" are related to content of the Product and include without limitation all DATs ("DATs" or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Products which are made generally available to Intel's customer base as a part of purchased Support and which are not separately priced or marketed by Intel.

2. **Provision of Support.** Intel will provide Support to Customer during the Support Period at the Support Level that has been purchased by Customer and is confirmed to Customer in a Grant Letter or in the case of Cloud Product, based on the initial order or renewal. Customer will not be entitled to receive Support outside of the Support Period.

3. **Updates and Upgrades.** Intel grants to Customer a non-exclusive, non-transferable license to use Upgrades and Updates provided by Intel during the Support Period as a part of purchased Support. Such Upgrades and Updates are subject to the terms of the license granted by Intel to the Customer for the Software. With the exception of Cloud Product, (a) Customer shall promptly download, distribute and install all Updates as released by Intel during the Support Period and (b) Intel strongly suggests that Customer also downloads, distributes and installs all Upgrades as released by Intel during the Support Period. Customer acknowledges that any failure to do so could result in Customer's inability to receive Updates and Technical Support and therefore could cause major security risks. An Upgrade may require a hardware upgrade or new platform conversion to function properly.

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4. **Supported Versions and End of Life.** The provision of Support is limited to (a) the current version and (b) the immediately preceding version of the Product. Only the current version of Cloud Products will be supported. Notwithstanding any of the foregoing, Support is subject to Intel's End-of-Life Policy attached hereto. It is Customer's responsibility to review Intel's Product Support Lifecycle webpage at: http://www.Intel Security Public Sector, Inc..com/us/enterprise/support/customer_service/end_life.html to determine whether a Product qualifies for Support. Furthermore, Customer proactive Support notifications can be accessed by subscribing to Intel Support Notification Service (SNS) available at <http://sns.snssecure.Intel Security Public Sector, Inc..com>.
5. **Response Times.** Intel uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <https://support.Intel Security Public Sector, Inc..com/SPR/WebContent/ProgramsAndPolicies/fag-corporate-technical-support.pdf>. Access to Intel's websites for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors.
6. **Bug Fixing and Remote Diagnostics.** Intel uses commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With Customer's prior authorization, Intel may perform remote diagnostics to work on reported problems. In the event Customer declines remote diagnostics, Intel and Customer may agree to on-site Technical Support which is subject to an additional fee and reasonable travel and expenses, which the customer is responsible for.
7. **Support Period and Expired Support.** The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. In the event the Software or Hardware Support expires, any reinstatement of Support must be purchased to cover the lapsed Support since expiration and be renewed until the Support is current. Support must be purchased within one (1) year after expiration of the previous Support Period.
8. **Support Coverage.** Support is sold based upon the quantity of all Products purchased by Customer. Upon purchasing Support for a Product, Customer must purchase the same Support Level for all Product units owned or licensed by Customer that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Customer on a per-product family basis and are sold per Support Region.
9. **Acquired Company Products.** From time to time Intel may acquire other companies and continue to support the products licensed by such companies ("**Acquired Products**"). The Support Level(s) defined herein may not be applicable to the Acquired Products at the time of the acquisition but Intel may within a reasonable period of time after the acquisition provide a description of the Support Level(s) available for the Acquired Products, which will become applicable once published on the Support webpage.
10. **Exclusions.** Intel has no obligations to, (a) provide Support where hardware, tools or software other than those supplied or approved by Intel have been incorporated with the Product (b) provide Support for Hardware damaged by or Hardware failures caused by Customer (c) import or export customer data, create or modify custom business rules or reports, or support custom modifications to databases, active server pages, or other code, components or programs (d) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published Intel specifications or (e) provide Cloud Product Support for issues arising from any violation of the Cloud Product Terms and Conditions.
11. **Obligations of Customer.**
- a. **Support Process:** Customer must report Software or Hardware Product problems to Intel Support organization, and be prepared to provide Intel with (i) the Grant Number, (ii) the location of the Product, (iii) a detailed description of the problem, (iv) a description of the hardware on which the Software is loaded, including any serial number or service tag number where applicable, and (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. Customer must report Cloud Product problems to Intel Support organization, and be prepared to provide Intel with (i) technical contact information and (ii) a detailed description of the problem. Intel may request that Customer takes certain actions to determine whether the problem or error is related to the Product, or other item. Customer must reasonably cooperate with Intel during this process.
 - b. **Access:** Customer shall provide Intel with sufficient, free and safe access to the Products, Customer's computer systems networks and facilities in the event that it is agreed that Intel will provide on-site support at Customer's location or facilities or that Intel will perform remote diagnostics. Intel will conform to Customer's security requirements before gaining access to Customer's facilities, provided such requirements are issued in writing to Intel reasonably prior to accessing such facilities.
 - c. **Backup and Restore:** Customer must keep adequate backup copies of data, databases, and application programs and agrees that Customer is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.
12. **Termination.** Any terms which by their nature extend beyond the termination of this agreement remain in effect until fulfilled.
13. **Hardware specific terms.**
- a. **Region and Geographic Limitations:** Unless otherwise agreed in writing by Intel or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Customer originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <http://www.Intel Security Public Sector, Inc..com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf> (provided for informational purposes only)
 - b. **Hardware Return:** Prior to returning any Hardware to Intel for repair or replacement, Customer must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Customer proprietary or confidential information that prevent Intel from exchanging, repairing or replacing the Hardware, (ii) Customer has obtained a return authorization from Intel, including a return material authorization number (a "**RMA Number**"). Hardware returned to Intel becomes the property of Intel at the time it is received by Intel and Customer shall assume ownership of all replacement Hardware provided by Intel to Customer upon shipment by Intel.

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- c. **Restrictions:** Customer must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from Intel. Customer must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from Intel or breach any tamper seal on the Hardware.
- d. **Inspection Period:** Intel reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents and to request Customer to install the most current Upgrades and Updates before Intel agrees to renew Support for the Hardware.

14. Resident Support Account Manager Terms.

- a. If Customer purchases a Resident Support Account Manager ("**RSAM**"), Intel will provide an RSAM to provide on-site Support that Customer has acquired from Intel. Additional information on the description and scope of the RSAM's roles and responsibilities can be found at <http://www.Intel.Security.Public.Sector, Inc..com/us/support/support- benefits.aspx>.
 - b. The RSAM will work during normal business hours as agreed upon between Intel and Customer. The RSAM may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the RSAM's employment with Intel end, Intel will provide to Customer the name and phone number of a temporary Support Account Manager ("**SAM**") that will cover Customer's account until the RSAM returns. The temporary SAM will provide Support services remotely.
 - c. Customer acknowledges and understands that the timeline to on-board at Customer's location is approximately ninety (90) days from the time of the notification of the requirement. During this 90-day period, Intel will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RSAM. Intel and Customer will work together in good faith to select the RSAM. In the event Customer rejects the candidate or delays in the selection of a reasonable candidate Intel has offered for consideration, Intel will assign an interim SAM. For avoidance of doubt, the interim SAM will not be an on-site resource and may be a shared resource with other Intel customers.
 - d. Customer acknowledges that Intel employees are quickly deployed, and any delay in the selection of a candidate may: (1) result in Customer not being able to have its desired individual perform the Support services;
- (2) result in the use of an interim SAM (as stated above); and (3) hinder the performance of the Support services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the duration of the term of the Support Period. No fees will be refunded or credits given for the period that an interim SAM is used.

15. Warranty. INTEL WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND INTEL'S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. INTEL SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF CUSTOMER PROVIDES WRITTEN NOTICE OF THE BREACH TO INTEL WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, CONFORMITY TO ANY REPRESENTATION, SKILL AND CARE. INTEL DOES NOT WARRANT OR GUARANTEE THAT SUPPORT WILL BE FREE FROM ERRORS OR DEFECTS OR THAT THE SUPPORT WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to you. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY).

16. Limitation of Liability; Confidentiality; Audit; Export Control. Customer agrees to these Technical Support and Maintenance Terms and Conditions as part of one or more product licenses or services agreements between Intel and the Customer ("**Underlying Agreement**"). THE LIMITATION OF LIABILITY, CONFIDENTIALITY, AUDIT AND EXPORT CONTROL PROVISIONS OF THE RELEVANT UNDERLYING AGREEMENT ARE INCORPORATED INTO THESE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.

17. General.

- a. **Recording:** In providing Support, Intel may record all or part of telephone calls between Customer and Intel for quality assurance and training purposes in compliance with applicable laws.
- b. **Assignment:** The provision of Support is not assignable by Customer without the prior written consent of Intel. Any attempt of assignment by Customer without such consent will be void. Intel may subcontract its obligations to provide Support hereunder to another party but with notice to the Customer.
- c. **Governing law:** All disputes arising out of or relating to this Agreement or its subject matter will be governed by the Federal Laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

18. Entire Agreement. The Support Terms and any additional terms referenced herein constitute the entire agreement between Customer and Intel with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof. The Support Terms may not be modified except by a written addendum agreed to by Intel and Customer.

- **Enterprise Products End of Life Policy**

April 1, 2011

Intel Security Public Sector, Inc. strives to deliver the most innovative and cost effective products, and therefore may periodically elect to discontinue specific products. This document describes Intel Security Public Sector, Inc.'s intended communication and transition plans for any discontinued product. The policy is intended to provide our customer's with the sufficient information to confidently plan the evolution of their environment to migrate to replacement technologies.

The End of Life process begins with the End of Sale announcement . Such End of Sale announcement contains an official timeline describing the product discontinuation plans including an End of Sales date and an End of Life date. Intel Security Public Sector, Inc. will exercise commercially reasonable efforts to provide the End of Sales announcement six months prior to the effective End of Sale Date. If Intel Security Public Sector, Inc. is offering a direct replacement product, it is possible that less than six months notification will be made. Support contracts cannot extend past the End of Life date. Additionally, Intel Security Public Sector, Inc. may provide recommendations and alternatives for customers to transition from the End of Life product. During the End of Life period, Intel Security Public Sector, Inc. will meet existing customer support agreements.

End of Sale and End of Life dates and related information and announcements are posted on Intel Security Public Sector, Inc.'s web site:
<http://www.Intel Security Public Sector, Inc..com/us/support/support-eol.aspx>

Intel Security Public Sector, Inc. End of Life Software Support

This policy applies to all software. If a software product is Generally Available (GA), the service level of the support contract is Intel Security Public Sector, Inc.'s Full Service Software Support (FSSS).FSSS will continue for a maximum of 1 year after the End of Sale date

Intel Security Public Sector, Inc. End of Life Hardware Support

This policy applies to hardware, firmware, and software components of Intel Security Public Sector, Inc.'s products distributed on a hardware platform (collectively referred to as Hardware). If a Hardware product is GA the, the service level of the support contract is Intel Security Public Sector, Inc.'s Full Service Hardware Support (FSHS). When a hardware product transitions to the EOL period, the first three years of support is Full Service Hardware Support (FSHS). The support level provided during the 4th and 5th years will be Limited Service Hardware Support (LSHS).

Intel Security Public Sector, Inc. Custom Software Support

When a product transitions to the End of Life period, at Intel Security Public Sector, Inc.'s discretion, Custom Software Support (CSS) may be available as an exception. To be eligible for CSS, the customer must have a current and continuous support contract in place. If available, Custom Software Support will:

- Be purchasable
- Provide limited content updates
- Be available for a limited time period
- Have specific terms and conditions
- Will never include hardware support and/or hardware warranty

Summary

	Software Products	Hardware Products
Amount of Support able to be purchased once End of Sale has been announced	One (1) Year	Five (5) Years
Is Full Service Support limited?	No	Yes: Support Service Levels will be limited in the 4 th and 5 th years
Is Custom Software Support available after the Full Service Support End Date?	At Intel Security Public Sector, Inc.'s discretion	At Intel Security Public Sector, Inc.'s discretion. Software only.

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Enterprise Products End of Life Policy

April 1, 2011

DEFINITION SUMMARY

EOL Period (EOL) - End of Life Period refers to the timeframe beginning with the day that Intel Security Public Sector, Inc. announces product discontinuation until the last date that the product is formally supported by Intel Security Public Sector, Inc.. In general, after the EOL Period is announced enhancements are not made.

End of Sale Notification – The notification that establishes when the discontinued product will no longer have General Availability. EOS Notification begins the EOL Process.

End of Sale Date (EOS) – The date when a product is no longer available for purchase from current Intel Security Public Sector, Inc. Price Books. This date determines the End of Life date.

End of Life Date – The last day that the product is supported according the terms of Intel Security Public Sector, Inc.'s standard support offering.

General Availability (GA) – Product is generally available for sale on current Intel Security Public Sector, Inc. Price Books and there has been no EOS Notification

Hardware – The term "Hardware" means hardware, firmware, and software components of Intel Security Public Sector, Inc.'s products distributed on a hardware platform, and any combination of them, but does not include any stand alone software or other intangible products whether pre-loaded or purchased separately.

Custom Software Support (CSS) - Is an individually negotiated software support contract requiring a Intel Security Public Sector, Inc. approved quote for a product where EOS has been announced. CSS requires the final release of software for the product. Custom Software Support never includes hardware warranty or hardware support.

To be eligible for CSS, Intel Security Public Sector, Inc. Technical Support coverage must be continuous. CSS will provide commercially reasonable effort workaround solutions and within the following conditions:

- The technology remains supportable according to Intel Security Public Sector, Inc. and,
- The platform it operates on is supported by our OEM technology partner (where applicable)

Full Service Software Support (FSSS) - After EOS has been announced, FSSS includes available maintenance and technical support. Security updates and maintenance will continue until End of Full Service Support. To receive Full Service Support Intel Security Public Sector, Inc. may require the latest software product versions, service pack, DAT and signature files, and scan engine [where applicable], are deployed.

Full Service Hardware Support (FSHS) - After EOS has been announced, FSHS includes hardware warranty, escalations, patches and maintenance releases, product updates, content updates, and available maintenance and technical support. To receive Full Service Hardware Support Intel Security Public Sector, Inc. may require installation of latest software/firmware and/or content updates. These elements are introduced by Intel Security Public Sector, Inc. to add features and resolve issues. If any element is not at a current version, then the total product configuration may not be supported. Intel Security Public Sector, Inc. will provide a version of software that will provide the functionality as outlined in release notes of the product.

Limited Service Hardware Support (LSHS) - When a hardware product transitions to the EOL period, the support service levels provided during the 4th and 5th years of a support contract will be limited. Limited Hardware Support includes limited hardware warranty, severity 1 bug fixes, and content updates. Software and firmware features and functionality will not be enhanced. Major software updates are not included. Hardware Support may be reduced to limited service levels. In the event the latest release of supported software requires a new hardware platform the client may be given an opportunity to purchase a comparable platform. A hardware product will not be provided cost free if a newer version of the software will not run on the older hardware

Intel Security Public Sector, Inc. 3965 Freedom Circle, Santa Clara, CA 95054, US, 888.847.8766, www.Intel Security Public Sector, Inc..com

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Last Updated

On May 9, 2016, the Intel Security Public Sector, Inc. Privacy Notice was updated to the Intel Privacy Notice (see below). To view Intel's previous notices, please click <http://www.intel.com/content/www/us/en/privacy/intel-privacy-notice-archive.html>

Intel Corporation and its group companies ("Intel", "we", "us" and "our") respect your privacy. This Privacy Notice describes our privacy practices regarding the collection, use, and disclosure of your information through Intel's web sites, products, online services, software, apps, tools, and other services and functionality we provide both online and offline (collectively referred to as "Intel® Services"), along with our marketing and advertising practices.

Some Intel Services use cookies and similar technologies to access or store information. Specific information about how we use cookies, how we respond to Do Not Track signals, and how you can refuse certain cookies, is set out in our [Intel Cookies and Similar Technologies Notice](#).

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1. INFORMATION COLLECTION

Personal Information We May Collect

Intel may collect various types of personal information, including:

- Personal and business contact information (such as name, billing and shipping address, phone number, email address, and social media/messaging account ID)
- Intel Account ID
- Profile picture
- Social media postings and information
- Payment card, digital wallet, or other payment service information
- Depending on the service we are providing to you we may also need to collect more sensitive personal information (such as location, government-issued identification, photographs, audio/video recordings, images, and biometrics) directly from you

If you submit any personal information about other people to us or to our service providers, you represent that you have the authority to do so and to permit us to use their personal information in accordance with this Privacy Notice.

We and our service providers may collect personal information from a variety of sources, including:

- From you or someone acting on your behalf: We may collect personal information you or someone acting on your behalf shares with us such as your name and contact details.
- Through the Intel Services: We may collect personal information about you when you use Intel Services, for example, when you sign up for a newsletter, make a purchase, or use or install our products or apps.
- Through Third Parties' Services: We may collect personal information about you when you use third party services that utilize the Intel Services.
- Offline: We may collect personal information you provide to us offline, such as when you visit our stores, attend one of our trade shows or events, place a verbal order over the phone or contact customer services.
- From Other Sources: We may collect your personal information from other sources, such as public databases, joint marketing partners, and social media platforms. We may also receive your personal information from people with whom you are "friends" or otherwise connected on social media platforms. For example, if you elect to connect your social media account to your Intel Services account, certain personal information from your social media account will be shared with us. Such information may include personal information that is part of your social media profile or your friends' profiles. Similarly, if your social media "friends" connect their social media account to their Intel Services account, information about you may be shared with us via this "friend" connection.

Other Information We May Collect

Intel may also collect other information from your app, browser, or device that does not reveal your (or anyone else's) real world identity, for example:

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- Browser and device information
- App or device usage data
- Information collected through cookies, pixel tags, and similar technologies
- IP address
- Location data
- Aggregated, anonymized, or de-identified information
- Demographic information and other information provided by you (i.e., language, occupation, postal code).

We and our third-party service providers may collect this information in a variety of ways, including:

- Through your browser or device: Most browsers and devices collect certain information automatically, for example, type and version of operating system, screen resolution, device manufacturer and model, language, Internet browser type and version, and the name and version of the Intel Services (such as the app) you are using. We use this information, for example, to make sure that the Intel Services function properly, analyze the performance of our products, and improve and maintain the Intel Services.
- Through your use of an Intel app: When you download and use an Intel app, we and our service providers may track and collect usage data, such as the date and time the Intel app on your device accesses our servers and what information and files have been downloaded to the Intel app.
- Through cookies and similar technologies: We use cookies to make our web sites operate, work more efficiently, and provide analytic information. Technologies similar to cookies are also used in connection with some Intel Services, such as pixel tags, web beacons, clear GIFs, JavaScript, and local storage. Please view our [Intel Cookies and Similar Technologies Notice](#) for more information and how to disable/remove certain cookies.
- IP Address: IP addresses are automatically transmitted as part of any Internet communication, and collecting IP addresses is a common practice; many web sites, applications and other Intel Services collect IP addresses automatically. We use IP addresses for purposes such as communicating with your device, calculating usage levels of the Intel Services, helping diagnose server problems, security, and administering the Intel Services. Location Data: We may collect the physical location of a connected device, for example, using satellite, cell phone tower, and WiFi signals. We may use your device's physical location to provide you with personalized location-based Intel Services, content, and advertising. We may also share your device's physical location, combined with information about what advertisements you viewed and other information we collect, with our marketing partners to enable them to provide you with more personalized content and to study the effectiveness of advertising campaigns. You can choose whether to allow or deny uses and/or sharing of your device's location by changing your device settings, but if you choose to deny such uses and/or sharing, we and/or our marketing partners may not be able to provide you with the applicable personalized Intel Services, content, and advertising.

2. NOTICE

We provide access to our Privacy Notice by:

- Linking to it throughout our websites
- Referencing it in our Terms of Use, End User License Agreements
- Incorporating it into our contracts, agreements, and other documents as necessary or appropriate

3. INFORMATION USE AND DISCLOSURE

How We May Use and Disclose Personal Information

We may use personal information:

- To provide Intel Services.
- To respond to your inquiries and fulfill your requests, such as to send you technical documents or whitepapers.
- To send you marketing communications that we believe may be of interest to you, such as newsletters, in accordance with your communication preferences.
- To personalize your experience on the Intel Services by presenting products, marketing messages, offers, and content tailored to you.
- To allow you to participate in surveys, sweepstakes, contests, and similar promotions and to administer these activities. Some of these activities have additional rules, which could contain more information about how we use and disclose your personal information, so we suggest that you read these rules carefully.
- To allow you to send messages to a friend through the Intel Services. By using this functionality, you are telling us that you are entitled to use and provide us with your friend's contact information.
- To complete and fulfill your purchase, for example, to process your payments, have your order delivered to you, communicate with you regarding your purchase, provide you with related customer service, and establish and manage your Intel accounts.
- For our business purposes, such as data analysis, audits, crime/fraud monitoring and prevention, security, developing new products, testing, enhancing, improving or modifying our Intel Services, identifying usage trends, determining the effectiveness of our promotional campaigns, and operating and expanding our business activities.
- Perform accounting, auditing, billing, reconciliation, and collection activities. To send administrative information and service notifications to you, for example, information regarding the Intel Services and changes to our terms, conditions, and policies.
- Perform other activities consistent with this Notice.

Personal information may be shared or disclosed:

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- To our affiliate entities and subsidiaries for the purposes described in this Privacy Notice.
- To our authorized service providers and suppliers who provide services to us such as web site hosting, data analysis, payment processing, order fulfillment, information technology and related infrastructure provision, customer service, email delivery, credit card processing, auditing and other similar services.
- To third parties to permit them to send you marketing communications, as permitted under applicable law and in accordance with your communication preferences.
- To third party sponsors of sweepstakes, contests, and similar promotions.
- To identify you to anyone to whom you send messages through the Intel Services.
- By you, on message boards, forums, chat, profile pages and blogs to which you are able to post information and materials. Please note that any such information you post or disclose in public forums will become public information, and may be available to users and to the general public. We urge you to be very careful when deciding to disclose your personal information, or any other information, online.
- To a third party in the event of any contemplated or actual reorganization, merger, sale, joint venture, assignment, transfer or other disposition of all or any portion of our business, assets or stock (including in connection with any bankruptcy or similar proceedings).
- As we believe is required, necessary, or appropriate: (a) under applicable law, including laws outside your country of residence; (b) to comply with legal process and/or to respond to requests from competent public and government authorities including public and government authorities outside your country of residence; (d) to enforce our terms and conditions; (e) to protect our operations and those of any of our affiliates; (f) to protect our rights, privacy, security, safety, and physical and intellectual property, and/or the rights of our affiliates, you, or others; and (g) to allow us to pursue available remedies or limit the damages that we may sustain.

How We May Collect, Use and Disclose Other Information

Please note that we may collect, use, and disclose other information obtained through cookies in accordance with our [Intel Cookies and Similar Technologies Notice](#) or Intel Services. In some instances, we may combine other information with personal information (such as combining your name with your postal code). If we combine any other information with personal information, we will treat the combined information as personal information as long as it is combined and is personally identifiable.

Product Updating and Reporting

Our products and services may also process certain data to provide software updates and reports. These update functions may automatically check your system to see whether files relating to the services need to be refreshed, updated, or modernized.

Intel may also use the information to adapt the product to conform to user preferences based on actual use.

4. THIRD-PARTY SERVICES

This Privacy Notice does not address, and we are not responsible for, the policies and practices of third parties or other organizations that are not Intel service providers, including policies and practices related to privacy and security, data collection, processing, use, storage, and disclosure. This includes: (a) any third party operating any site or service to which the Intel Services link – the inclusion of a link on the Intel Services does not imply endorsement of the linked site or service by us or by our affiliates; or (b) any app developer, app provider, social media platform provider, operating system provider, wireless service provider or device manufacturer (such as Facebook, Apple, Google, Microsoft, LinkedIn, etc.) - including any personal information you disclose to other organizations through or in connection with the Intel Services or our Social Media Pages. For example, we may use and direct you to a third party payment service to process payments made through the Intel Services. If you wish to make such a payment, your personal information may be collected by such third party and not by us, and will be subject to the third-party's privacy policy, rather than this Privacy Notice.

When we share personal information with an Intel service provider, we require that they first contractually agree to comply with reasonable and appropriate privacy and security standards.

5. THIRD-PARTY ADVERTISERS

We may use third-party advertising companies to serve advertisements regarding goods and services that may be of interest to you when you access and use the Intel Services and other web sites, based on information obtained, for example, through cookies and similar technologies relating to your access to and use of the Intel Services and other web sites. Please refer to our [Intel Cookies and Similar Technologies Notice](#) on how we use cookies and how you can disable certain cookies.

Intel does not share your personal information with non-affiliated third parties for their own marketing use without your permission.

6. SECURITY

The Intel Services are designed to provide reasonable and appropriate organizational, technical, and administrative measures to protect personal information within our organization against unauthorized or unlawful access, alteration, disclosure, or destruction. Users of Intel Services must also do their part in protecting the data, systems, networks, and service they are utilizing. Unfortunately, no data transmission or storage system can be guaranteed to be 100% secure. If you have reason to believe that your interaction with us is no longer secure (for example, if you feel that your password to any Intel account has been compromised), please immediately notify us by contacting us in accordance with the *"Contact Us"* section below.

7. MARKETING PREFERENCES

We give you many choices regarding our use and disclosure of your personal information for marketing purposes. You may update and request access to your contact details and communication preferences by using one of the following methods: visit the specific product or service web site; use

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the [Contact Us](#) form; use the “unsubscribe” link, or send a letter to the postal address below. You may choose to update your communication preferences for the following types of marketing activities:

- To accept or refuse receiving marketing-related messages from us in the future.
- To accept or refuse our sharing of your personal information with affiliates and subsidiaries so that they may market directly to you.
- To accept or refuse our sharing of your personal information with non-affiliated third parties so that they may market directly to you.

You can also unsubscribe from Intel marketing-related messages by following the unsubscribe instructions included in each marketing-related message sent to you. We will comply with your request(s) as soon as reasonably practicable. Please also note that if you do choose not to receive marketing-related emails from us, we may still send you important administrative and transactional messages (i.e., service notifications) about your Intel Services.

8. HOW YOU CAN MANAGE YOUR PERSONAL INFORMATION

If you would like to correct, update, delete, or request access to the personal information that you have provided to us, you may contact us by: visiting the specific product or service web site; the online [Contact Us](#) form; or sending a letter to the postal address below including your name, email address, account identification, and purpose of the request.

For your protection, we will only implement requests with respect to personal information about you (not anyone else), and we may need to verify your identity before implementing your request. We will comply with your request as soon as reasonably practicable and in accordance with applicable law. We may need to retain certain information for recordkeeping purposes, as required under applicable legal obligations, and/or to complete any transactions that you began prior to requesting such change or deletion (e.g., when you make a purchase or enter a promotion, you may not be able to change or delete the personal information provided until after the completion of such purchase or promotion). Some of your information may remain within our systems and other records, in compliance with applicable law.

Storage of the information we collect from you

The information we collect may be stored and processed in servers in the United States and wherever Intel and our service providers have facilities around the globe and in accordance with local laws.

9. RETENTION PERIOD

We will retain your personal information for the period necessary to fulfill the purposes outlined in this Privacy Notice unless a longer retention period is required or permitted by law.

10. USE OF INTEL SERVICES BY MINORS

We comply with the Children’s Online Privacy Protection Act of the United States and similar laws around the world where applicable to Intel Services. We do not knowingly collect personal information from children without proper parental consent. If you believe that we may have collected personal information from someone under the age of thirteen (13), or under the applicable age of consent in your country, without parental consent, please let us know using the methods described in the Contact Us section and we will take appropriate measures to investigate and address the issue promptly.

11. INTERNATIONAL TRANSFERS OF PERSONAL INFORMATION

Intel is a U.S.-based, global company. As such, we may transfer your personal information to its parent company, Intel Corporation in the United States (U.S.), or to any Intel group company worldwide when processing that information for the purposes described in this Privacy Notice. We may also transfer your personal information to our third party service providers, who may be located in a different country to you.

Personal Information shared by an Intel entity from the European Economic Area and Switzerland is also subject to a set of binding corporate rules known as the Intel Corporate Privacy Rules (“Intel’s BCR”) which establish adequate protection of such personal information at participating Intel group companies. Intel’s BCR can be accessed [here](#).

Intel Corporation complies with the U.S.-EU and U.S.-Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information from the European Union and Switzerland. Intel has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. We will protect the information we receive in the U.S. from the EU and Switzerland in accordance with our Safe Harbor commitments. To learn more about the Safe Harbor Program, and to view Intel’s certification, please visit <http://www.export.gov/safeharbor>.

12. CONTACT US

If you have questions or concerns about Intel’s privacy practices, you can contact us by using the [Contact Us](#) form or send a letter to the postal address listed below. Please include your contact information, name of the Intel Service or website, and a detailed description of your request or privacy concern.

Intel Corporation
ATTN: Privacy Office
M/S RNB4-145
2200 Mission College Blvd.
Santa Clara, CA 95054 USA

13. SUPPLEMENTS AND ADDITIONAL NOTICES

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Some Intel Services may have additional Notices about how such products and services process Personal Information. Please refer to the relevant Notice for the Intel Service you are using for additional information about how Intel processes Personal Information.

The following privacy supplements, policies, notices, and statements ("Notice") are incorporated by reference into the Intel Privacy Notice:

- [Intel Worldwide Candidate Privacy Policy](#)
- [Intel Online Privacy Notice Supplement for Health-Related Data](#)
- [Intel® Technology Provider Privacy Statement](#)
- [Intel® Active Management Technology: Privacy Statement](#)
- [Security Products, Services, and Functionality Privacy Notice Supplement](#)
- [Intel Cookie and Similar Technologies Notice](#)

14. UPDATES TO THIS PRIVACY NOTICE

We may change this Privacy Notice. The "Last Updated" section at the top of this page states when this Privacy Notice was last revised. Any changes to this Privacy Notice will become effective when we post the revised Privacy Notice on the Intel Services. Your use of the Intel Services following these changes means that you accept the revised Privacy Notice.

If any change may materially and negatively affect the privacy of your personal information, we will use reasonable efforts to notify you in advance and give you a reasonable period of time to object to any changes.

We encourage you to periodically review this Privacy Notice to stay informed about how we collect, use, and share personal information.

Worldwide Candidate Privacy Policy

This page provides additional details on the privacy practices of the Resume/Curriculum Vitae (C.V.) section of Intel's website. This is only a supplement to Intel's corporate [privacy policy](#).

Intel will use your personal information for recruitment purposes, and if you are offered a job or become employed by Intel, for other employment-related purposes.

By submitting your resume/C.V. information to Intel, you agree that we may use it for recruitment purposes (including transferring the data to other countries, transferring your information to other companies authorized to perform specific services for Intel and/or other processing relevant to recruitment purposes). It will not be shared with others for non-recruitment purposes.

Resumes/C.V.s should include information relevant to your employment history and education (degrees obtained, places worked, positions held, relevant awards, and so forth). Intel recommends that you do not disclose sensitive personal characteristics (for example, gender, height, weight, religion, philosophical or political beliefs, financial data) in your resume/C.V. or letters to Intel.

Resume/C.V. Data Retention

Intel will not retain your personal information longer than is necessary for the purposes for which it is collected. Resumes/C.V.s may be retained in order to comply with various country requirements on applicant data reporting.

Accessing, Updating, and Removing Resume/C.V. Information

If you need to update or otherwise make changes to your resume/C.V., simply resubmit a new resume/C.V. If you wish to have your resume/C.V. completely removed from our system, please send an email to: Resume.Removal@intel.com. To aid our support agents in locating your resume/C.V., please be sure and include your name, email address and phone number as submitted with your resume/C.V.

For Users Outside the United States

Your information will be processed and/or stored in our U.S. database. By submitting your resume/C.V., you are consenting to the export of your information to the U.S. for processing and storage.

Privacy Notice Links

- [Candidate Notice](#)
- [Intel® Notice for Health-Related Data](#)
- [Intel® Technology Provider Program Notice](#)
- [Intel® Active Management Technology Notice](#)
- [Security Products, Services, and Functionality Privacy Notice](#)

Intel Online Privacy Notice Supplement for Health-Related Data

Intel Corporation and its worldwide subsidiaries ("Intel") respect your privacy and recognize your need for adequate protection of the health-related data you may share with us. This health-related data privacy statement is supplemental ("Supplement") to the Intel Online Privacy Notice ("Notice") and the Intel Corporate Privacy Rules ("ICPRs") and is applicable to Intel's collection, storage, or use of health-related data.

This Supplement provides additional information about the privacy of your health-related data, including limitations on access to your health-related data, the use of de-identified or anonymized data, security safeguards including adequate encryption in storage and transfer, and cross-border transfers of your health-related data.

Access

Intel may have access to your health-related data with either your express consent or at the direction of a third party that you have authorized to share your health-related data. To the extent your health-related data is protected health information ("PHI") or its regulated equivalent in other jurisdictions, Intel will handle such PHI in accordance with applicable laws and regulations.

De-identified, Anonymized, or Aggregated Data

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Intel may de-identify, anonymize, or aggregate your health-related data in compliance with applicable laws and regulations. Intel will not use nor share such information in violation of applicable laws or regulations.

Security

Intel will provide appropriate physical, technical, and administrative safeguards with respect to your health-related data and in accordance with applicable security laws and regulations. For example, when stored by Intel's service, Intel will encrypt your health-related data both in storage and in transit.

Potential Transfer of Your Health-Related Data to Other Countries

Intel may provide health-related data management, data support, and data processor products and/or services in various countries. Intel is committed to providing these products and/or services in a physical and virtual environment in accordance with applicable laws and regulations.

Supplement Updates

This Supplement updates and supersedes any prior Intel health-related data notice. We may change this Supplement at any time. The "LAST UPDATED" section at the bottom of this page lists when this Supplement was last revised. Any changes to this Supplement will become effective when we make the revised Supplement available on or through the Intel website.

How to Contact Us

You can contact Intel by using the Contact Us form or send a letter to the mailing address listed below. Please include your contact information, name of the Intel web site or service, and a detailed description of your request or privacy concern.

Intel Corporation
ATTN: Privacy
M/S RNB4-145
2200 Mission College Blvd.
Santa Clara, CA 95054 USA

LAST UPDATED: November 14, 2013

Security Products, Services, and Functionality Privacy Notice Supplement

This security products, services, and functionality-related data privacy notice is supplemental ("Supplement") to the Intel Privacy Notice ("Notice") and the Intel Corporate Privacy Rules ("ICPRs") and is applicable to Intel's collection, storage, and use of data related to its security products, services, and products and services containing security functionality ("Security Products, Services, and Functionality").

We care deeply about your privacy and security and your online safety is a key element of our mission. We appreciate your decision to trust us with helping to protect your digital life from theft, disruption, and unauthorized access.

This Supplement is designed to inform you about how your personal information may be collected, managed, and used by Intel's Security Products, Services, and Functionality to:

- Help safeguard your devices and protect your data;
- Personalize and manage our relationship with you;
- Investigate, respond, and manage security related incidents and events;
- Improve security related products, services, and functionality; and
- Predict future security threats and vulnerabilities.

We hope this Notice helps you understand how your data is processed, why we need to collect data to provide appropriate security, and our commitment to using the personal data we collect for the purposes discussed in this Notice. By collecting and processing data, we can help to predict threats and better protect you, your devices, and your information. Every time you turn on a connected device, connect to a network or open an electronic file, you are exposed to potentially significant risk from hackers, spammers, malware, spyware, and other forms of unauthorized access to your data and systems. This is why it is important to use security products, services, and functionality such as Intel's to help keep you and your data safe. To defend against these threats and the thousands of new threats that emerge each day, Intel's web sites, products, online services, software, apps, tools, and other services and functionality we provide both online and offline (collectively referred to as "Intel Services") may:

- Analyze data sent to/from your device(s) for risks, threats, vulnerabilities, suspicious activity, and attacks;
- Assess the reputation of a sending/receiving device to determine whether access to data or target device should be allowed or if the transaction should be continued;
- Provide threat prediction to help enhance the protection provided by Intel Services;
- Share data with threat intelligence systems, networks, and organizations to improve our products, services, and overall internet security; and
- Adapt responses to new threats based on intelligence collected from your device and our global network;

1. The Information We Collect

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Intel collects some information that is personal (i.e., information that identifies an individual on its own or in combination with other data). Intel also collects non-personal information that does not, on its own, identify an individual person. When non-personal information is combined with other information so that it does identify an individual person, we treat that combination as personal information.

Intel obtains personal information when you or someone acting on your behalf provides it to us. We also collect personal and non-personal information when you obtain or use Intel products or services or when you use a device with Intel products or services installed.

IP Addresses

An Internet Protocol address (IP address) is a numerical label assigned to each device (e.g., computer, printer, mobile phone, server) participating in a computer network that uses the Internet Protocol for communication. It is how devices find each other on a network.

While it is possible that IP addresses can be associated with a single individual's device, they most often are associated with a group of systems, one system shared by many users, or a gateway into a group of systems or devices. For instance, IP addresses included in an email communication are typically associated with the respective email service provider and not with an individual user's device.

Intel Security Products, Services, and Functionality may use IP addresses to help protect your information, your devices, and your data. For example, we may detect that a system or a group of systems associated with a particular IP address has been compromised and is sending malware or spam to some of our users. Even without identifying who owns the compromised system or who compromised it, we can assign a score to that IP address to reflect the heightened threat it poses. Our Security Products, Services, and Functionality may then be able to divert your traffic away from this IP address or block this IP address from sending malware to your Intel-protected device before your device is a victim of an attack.

The use of IP addresses and other machine data is necessary to keep security protections current, relevant, and effective as cyber threats and attacks evolve over time.

2. Security Products, Services, and Functionality Data Processing

If you install or use one of our products or services, software may operate in the background of your computer system or device environment that is designed to perform specific security and privacy related tasks, which may include:

- SPAM protection;
- Real-time virus and malware scanning and protection;
- Intrusion detection, prevention, and protection;
- Threat prevention and prediction;
- Network defense;
- User authentication;
- Data encryption;
- Mobile device lockdown, locate, and wipe; and
- Back-up and recovery activities.

3. Security Products, Services, and Functionality Updating and Reporting

Our Security Products, Services, and Functionality may also process certain data to provide updates and reports. These update functions may check your system to see whether files relating to the services need to be refreshed, updated, or modernized.

For example, certain products, Services, and functionality may transmit log and bug report files to Intel. These files contain information, including the number of checked, suspicious, infected, or unwanted files or emails, the number of infections, the date and hash values of the detected infections, and the number of false negatives/false positives. The purpose of these reports is to analyze the frequency of particular infections or the prevalence of threats. Intel also uses the information to adapt the product to conform to user preferences based on actual use.

4. Supplement Updates

We may change this Supplement. The "*Last Updated*" section at the top of this page states when this Supplement was last revised. Any changes to this Supplement will become effective when we post the revised Supplement on the Intel Services. Your use of the Intel Services following these changes means that you accept the revised Supplement.

If any change may materially affect the privacy of your personal information, we will use reasonable efforts to notify you in advance and give you a reasonable period of time to object to any changes.

We encourage you to periodically review this Supplement to stay informed about how we collect, use and share personal information.

5. Contact Us

If you have questions or concerns about Intel's privacy practices, you can contact us by using the [Contact Us](#) form or send a letter to the postal address listed below. Please include your contact information, name of the Intel web site or service, and a detailed description of your request or privacy concern.

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Intel Corporation
ATTN: Privacy Office
M/S RNB4-145
2200 Mission College Blvd.
Santa Clara, CA 95054 USA

Last updated: May 9, 2016

Intel® Technology Provider Privacy Statement

Last Updated: November 23rd 2012

Overview of Privacy in the Intel® Technology Provider Program and on Intel's websites

Intel Corporation along with its worldwide subsidiaries ("Intel") is committed to respecting your privacy and recognizes your need for appropriate protection and management of the information you share with us. This privacy statement explains how we collect, use and safeguard the data we collect from you when you access the Intel® Technology Provider Program websites through any of the Intel® Technology Provider Programs intended for partners ("[Intel® Technology Provider](#)").

Since you have chosen to participate in the Intel® Technology Provider Program we will contact you in connection with that business relationship. If you give us or we otherwise collect personal or business information about you, we will treat it according to this privacy statement. Your participation in any of the Intel® Technology Provider Programs signifies your acceptance of our collection and use of any information you provide to us.

This privacy statement applies only to the Intel® Technology Provider Program websites. It supplements Intel's online [Privacy Policy](#) (click on link for further information) and it does not apply to other online or offline Intel sites or programs. We encourage you to read this privacy statement to ensure you understand Intel's privacy practices for the Intel® Technology Provider Programs. In the event of any inconsistency or conflict between this privacy statement and Intel's online Privacy Policy concerning our information handling practices of member data in connection with the Intel® Technology Provider Programs, or the Intel® Technology Provider Program Terms and Conditions, this privacy statement shall control.

On This Page

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Types of Information We Collect?

We collect a limited amount of information from you when you register to participate in any of the Intel® Technology Provider Programs which enables us to contact you at your place of business (e.g., such as your first and last name, company name, office phone number, company mailing address and e-mail address). In addition, we ask you for information that provides us with a profile of your company's business. We also collect information on the volume and types of Intel® Products you buy from our authorized distributors, or from third party distributors who participate in programs providing benefits to Intel® Technology Provider Programs members ("Program Distributors"). We may collect your company's bank account information from you to enable the direct payment to your company's account of any Intel® Technology Provider Program financial incentives for which your company is eligible. We use this bank account information only for payment processing.

The information collected by the Intel® Technology Provider Programs may vary depending on the geographic region around the globe (e.g., Europe, Africa, Asia Pacific, Latin America or North America) for the program in which your company registers. Generally, a member profile contains only the information requested as part of the registration process for the Intel® Technology Provider Programs. Additional information may be collected when you register to enter a contest offered to program members, sign up for a program event or training activity and at other times when you access the Intel® Technology Provider Program websites.

Use of Your Information

Intel will not use or share your information in a manner that differs from what is described in this privacy statement without your prior consent. We use your information for the following purposes related to the Intel® Technology Provider Programs:

- To deliver member benefits such as financial incentives or customer support programs
- To deliver member services such as newsletters, events or training activities
- To help us create and publish content relevant to you

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- To ensure our Intel® Technology Provider Program websites are relevant to the needs of our members
- To inform you of new product offerings, product discontinuances, special offers, updated information and other benefits or services available to members

Sharing of Your Information

We will not sell or rent your information. Intel may provide some or all of your personal or business profile information to certain of our direct customers in the distribution channel (specifically our authorized distributors), to Program Distributors, or third-party service providers to help us deliver products, information, benefits and services for the Intel® Technology Provider Programs (collectively referred to as "Authorized Third Parties"). Except for Authorized Third Parties, we will not provide your information to other companies or individuals without your permission.

Intel® Authorized Distributors and Program Distributors

Intel collects sales out data from its authorized distributors and Program Distributors, and uses this information for assessing your company's status in the Intel® Technology Provider Programs as well as determining the appropriate financial benefits, customer support programs or other program benefits or services for which you may be eligible. We will provide our authorized distributors and Program Distributors with the information they need in order to enable us to deliver to you relevant member benefits or services for the Intel® Technology Provider Programs. Our authorized distributors and Program Distributors, and their employees are prohibited from using the information that Intel provides to them for any purpose other than as instructed by Intel and Intel takes reasonable steps to ensure they adequately protect your information on Intel's behalf.

Third-Party Service Providers

Intel occasionally hires other companies to provide limited marketing services on behalf of the Intel® Technology Provider Programs, such as delivering email newsletters or prizes won in a contest, providing customer support services, hosting web services, processing training or other event registration, conducting program questionnaires, surveys, promotions or contests, processing payments for financial benefits or performing statistical analyses of our Intel® Technology Provider Programs. Intel will provide these third-party service providers with the information they need in order to deliver the benefits or services on behalf of the Intel® Technology Provider Programs. Our third-party service providers and their employees are prohibited from using the information that Intel provides to them for any purpose other than as instructed by Intel and Intel takes reasonable steps to ensure they adequately protect your information on Intel's behalf.

Other Disclosures

Intel may disclose your personal and business information if required to do so by law as necessary to respond to subpoenas, court orders, or other legal process. We also may choose to establish or exercise our legal rights to defend against legal claims. We may collect and possibly share your information in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, protect and defend the rights or property of Intel, situations involving potential threats to the physical safety of any person, violations of Intel's terms of use, or as otherwise required by law.

Protecting Your Information

Intel is committed to protecting the security of the information you provide to us as part of the Intel® Technology Provider Programs. We use a variety of security technologies and procedures and take reasonable and appropriate steps to protect the information that you share with us from unauthorized access, use or disclosure. For example, we store the personal and business profile information we collect in computer servers with limited access that are located in controlled facilities. Whenever we collect sensitive information, such as your company's bank account information or your company's sales out data of Intel's products sold through Intel's authorized distributors, we will take reasonable security measures to protect your information, such as encrypting the information in storage and transmission using encryption devices.

Tracking Activity on Our Websites

Registering on the Intel® Technology Provider Program Websites

When you browse any of the Intel® Technology Provider Program or Reseller Center websites and have not registered for any online service from Intel, you browse anonymously. Personal or business profile information-such as your name, address, phone number, and e-mail address-is not collected as you browse.

You will be asked to create a password for your account when you register for the Intel® Technology Provider Programs. At the time of registration, you will be requested to provide a secret answer to one of several predefined questions. We use your secret question and answer to help verify your identity to the Intel® Technology Provider Programs if there are account issues, such as needing to reset your password. Becoming a registered user enables you to view your confidential account information for the program(s) in which you are enrolled, access content that is available only to program members and perform other confidential transactions.

Use of Cookies and Other Tracking Technologies Cookies

We track how our Intel® Technology Provider Program websites are used by both anonymous visitors and our program members. One way we track web activity is by using a small text file that is sent to your browser known as a "cookie." Cookies collect information such as Internet domain and host names, Internet Protocol (IP) address, browser software and operating system types (e.g., Chrome or Internet Explorer), click-stream patterns and dates and times that our site is accessed. We also use cookies to collect information on which newsletter links are clicked by program members or whether you responded to a banner ad from outside our site or through an email link. This information is used to help us ensure we are communicating information program members want to read. It is collected in the aggregate form and not linked with individual personal information. A cookie cannot retrieve any other data from your hard drive, pass on computer viruses, or capture your e-mail address or any other personal information. Cookies from our Intel® Technology Provider Program websites can only be read by Intel websites.

Most browsers allow you to control cookies, including whether or not to accept them and how to remove them. If you choose to disable cookies in your browser, you will be able to view the text on the screens; however, you will not be able to access many important functions of the Intel® Technology Provider Programs or the Reseller Center websites and you will not experience a personalized visit.

Other Tracking Technologies

Another way we track website activity on the Intel® Technology Provider Program web pages is by using transparent electronic images called "clear

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GIFs," "Web bugs," or "Web beacons". This technology counts the number of users who visit a particular Intel® Technology Provider Program web page from specific banner ads outside the Intel® Technology Provider Program website or who clicked on links or graphics included in e-mail newsletters you receive from Intel. We do not use this technology to collect or access your personal information. Rather we use this technology as a tool to compile aggregated statistics about the usage of the Intel® Technology Provider Program websites. We may share aggregated site statistics with our service providers for the Intel® Technology Provider Programs. We do not share these aggregated site statistics with third party companies and do not allow other companies to place clear gifs or other tracking technologies on our sites.

Personalization of Program Benefits or Services

In order to provide you with a meaningful web experience and to improve the quality of services available through the Intel® Technology Provider Programs, Intel may customize its Intel® Technology Provider Program websites or email newsletters for program members based on information you provide to us both in individual (e.g., preferences, job function) and aggregate form (e.g., business profile, sales out information) to provide you information about our products or services that are of interest to you and better meet your needs based on your expressed preferences. In addition, Intel may track or collect behavioral data (e.g., newsletter or web 'clicks') and aggregate it at a role/job function level to personalize information at the role/job function level (e.g., a technical programmer may click on support information more often than another job role, so Intel may provide them with more support-type information).

Our third-party service providers may send you periodic email newsletters on behalf of Intel informing you about our products and services, as well as activities or events concerning the Intel® Technology Provider Programs. These third-party service providers may use software tools to track, measure and collect page interaction information, such as the links on which you clicked in a newsletter, based on a unique identification number that is assigned to your email address. They also retain and report to Intel the individual clicks in the newsletters solely for the purpose of analyzing product preferences and customizing subsequent email newsletters to include products or services that may be of interest to you. Occasionally Intel may include in its email newsletters information about other companies' services and products that are complementary to Intel's product or service offerings. We do not sell, rent or lease your information to these third party companies. Each email newsletter contains a link that allows you to unsubscribe for the newsletter at any time.

Data Storage

Many of our Intel® Technology Provider Program websites that collect information will store and process that information in databases in the United States; however, we may transfer your personal information to Intel Corporation in the US, to any Intel subsidiary worldwide or to third parties acting on behalf of Intel or an Intel subsidiary for the purposes of processing and/or storage. By using any of the Intel® Technology Provider Program websites, you consent to any transfer of your information outside of your country. Intel complies with all applicable laws around the globe that are designed to protect your data and abides by the Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union. Although legal requirements may vary from country to country, Intel adheres to the principles set forth in this privacy statement and strives to provide adequate protection for your information no matter where that information is collected, transferred or retained.

Updating Your Information

Accurate contact and business profile information allows our Intel® Technology Provider Programs to learn more about your business and tailor messages, benefits and program offerings to suit your needs. We provide you with the means to ensure that the information you provide to Intel is correct and current. Click on the 'My Account' link on your Intel® Technology Provider Program website to update your information.

Enforcement of this Privacy Statement

Should you have any additional privacy questions or comments related to this privacy policy, please use [this form](#) to contact us.

Changes to this Privacy Statement

Intel may occasionally update this privacy statement. When we make any changes to this privacy statement, we will also revise the "last updated" date at the top of the privacy statement. Intel will notify you of changes to this privacy statement by placing a prominent notice of change on the Intel® Technology Provider Program websites for a reasonable period of time or by any method customarily used for communicating with members of the Intel® Technology Provider Programs including, but not limited to, electronic mail.

Intel® Active Management Technology: Privacy Statement Last updated: 4/13/2010

Intel Corporation is committed to protecting your privacy. This statement describes what privacy-sensitive functions and capabilities Intel® Active Management Technology (Intel® AMT) enables, what Intel® AMT allows and does not allow IT administrators to do, and indicates the types of data Intel AMT stores on the user's system. This statement is supplemental to [Intel's Online Privacy Notice](#) and applies to Intel AMT only.

What is Intel AMT?

Intel AMT enables the Out-Of-Band (OOB) remote support and management of networked computer systems, in the enterprise, by authorized IT administrators.

What are the potential privacy issues raised by Intel AMT?

Remote management capabilities have been available from software vendors, and have been in use by many organizations' IT departments, for a considerable time.

However, Intel AMT allows IT administrators to remotely support and manage a user's computer, even if the user is not present or has turned off the computer.

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How can the user tell whether Intel AMT is enabled on the system?

Intel has developed a status icon to provide transparency and notification to the end user about the current status of Intel AMT. Currently, the standard Intel AMT software includes an Intel® Management and Security Status (IMSS) icon application that is installed along with drivers and services. The IMSS icon (located in the O/S system tray) displays the current status of Intel AMT on the system (enabled or disabled) and also provides instructions on how to enable/disable Intel AMT capabilities. Intel strongly recommends that OEMs load IMSS icon application, and at the present time all OEMs are doing so. However, in the future OEMs may elect not to comply with this recommendation by Intel, and additionally end-customer IT managers may choose to remove the application prior to providing Intel AMT-enabled systems to end-users. Users can also check the status of Intel AMT in their computer's BIOS settings. However, it is important to note that some enterprise IT departments may not grant users the required access to the BIOS that is necessary to enable/disable Intel AMT or check Intel AMT status.

What personal information does Intel AMT collect from the user?

Intel AMT does not collect any personal information (for example, name, address, phone number, etc.) from the user.

What type of information is sent by Intel AMT to Intel Corporation and how is that information used?

Intel AMT does not send any data to Intel Corporation.

What type of information does Intel AMT store?

Intel AMT stores information in flash memory on the system motherboard. This information includes firmware code, hardware inventory data (for example, memory size, CPU type, hard-disk type), an event log which records platform events (for example, CPU heating up, Fan Failure, BIOS POST message), Intel AMT security events (for example, a warning of Intel AMT password attack event, or System Defense filter tripping), as well as Intel AMT configuration data (for example, network settings, access control lists, and universal unique identifiers (UUIDs), including provisioning data, LAN MAC address, keys, KVM passwords, TLS certificates, and IT configured wireless network profiles). All configuration data that is deemed sensitive is stored in an encrypted form on the flash. More information regarding UUIDs may be found in the section below.

In addition, Intel AMT allows registered Independent Software Vendor (ISV) applications to store data on an area of the flash memory repository known as third party data store (3PDS). While Intel communicates what it believes to be best privacy practices for responsible data management to its ISVs, ultimately Intel does not make the determination as to what data may be stored in this area of flash memory and does not support encryption methods for ISV data. ISVs are therefore encouraged to encrypt their data prior to storing it on the flash if they deem their data to be sensitive. If you have concerns about potential privacy risks due to the data stored here, please contact the appropriate third-party software developer for further details regarding the type of information they are storing in the 3PDS area and how it is protected.

How does Intel AMT use UUIDs? What functionality do UUIDs enable and not enable on Intel AMT-enabled platforms?

Universal unique identifiers (UUIDs) are artifacts used by Intel AMT for a number of purposes, including the provisioning process, the security of the system (for example, passwords, keys, and TLS certificates), and to ensure that IT administrators are able to accurately connect to and manage a particular user's system within an enterprise.

Intel has not created any UUIDs to enable the functioning of Intel AMT, nor are UUIDs something new to Intel AMT. UUIDs are present in virtually all modern PCs, and are commonly installed by OEMs on all platforms, without relation to Intel AMT. Indeed, UUIDs are currently utilized by applications found on many PCs to isolate unique system information in order to provide expected functionality, such as the delivery of Operating System or virus control system updates. Intel AMT uses platform UUIDs in a very similar fashion – the primary difference being that in order to enable Intel AMT to access the UUID OOB, the UUID is copied to the flash memory repository.

It is important to note that the UUIDs on Intel AMT-enabled systems cannot be used by Intel to track users or their PCs, nor do they allow Intel to access user systems via a back door into the platform, nor do they allow Intel to force firmware down to the platform without user consent. Any UUID stored in flash by Intel AMT is only accessible to authorized IT administrators for a particular Intel AMT-enabled platform. The list of authorized IT administrators is configured by the end customer IT during a protected process using either enterprise certificates or physical presence at the Intel AMT system (via BIOS menu or USB key) to establish trust, and thus occurs entirely with consoles residing on trusted servers designated as such by the end customer IT. In other words, neither UUIDs nor any other information can be communicated to or from any party external to the end customer via Intel AMT unless the end customer expressly configures this. To identify authorized administrators for a particular system, see the Intel AMT Software Developer Kit (SDK) documentation available at softwarecommunity.intel.com/communities/manageability, which provides an API to retrieve the ACLs or the Kerberos authorized accounts.

What type of information does Intel® Active Management Technology (Intel® AMT) send across the network?

Intel AMT sends and receives data over predefined IANA network ports: port 16992 for SOAP/HTTP, port 16993 for SOAP/HTTPS, port 16994 for Redirection/TCP, and port 16995 for Redirection/TLS. DASH compliant systems will send and receive data over ports 623 for HTTP and 664 for HTTPS. The Keyboard-video-mouse (KVM) session can run either over the above redirection ports (16994 or 16995) or over the customary RFB (VNC Server) port - 5900. The type of information sent over the network includes Intel AMT command and response messages, redirection traffic, and system alerts. Data transmitted over ports 16993 and 16995 is protected with Transport-Layer Security (TLS) if that option is enabled on the user's system.

Intel AMT may send data over either an IPV4 or IPV6 network and is compliant with RFC 3041 privacy extensions.

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What does Intel AMT allow an authenticated IT administrator to do?

- Remotely power up, power down, and reboot the system for troubleshooting and repair.
- Remotely troubleshoot the system even when the host operating system is off or damaged.
- Remotely review and change BIOS configuration settings on the system. If the BIOS screen is password-protected, the IT administrator will have to retrieve and type in this password first. (Intel AMT does not provide an override for the BIOS password).
- Configure network traffic filters to protect the system.
- Monitor registered applications in execution on the system (for example, whether antivirus software is running).
- Receive alerts generated by the Intel AMT firmware reporting events on the user's system that may require technical support, such as: CPU heating up, Fan Failure, or System Defense filter tripping. Further examples are available publicly at www.intel.com/software/manageability.
- Remotely troubleshoot the user's system by redirecting the boot process to a floppy disk, CD-ROM or an image located on the IT administrator's system.
- Remotely troubleshoot the system by redirecting keyboard input and text-mode video output on the user's systems to the IT administrator's system.
- Remotely troubleshoot the system by redirecting keyboard, video, and mouse to and from the user's system and the IT administrator's system (KVM redirection).
- Configure in what network environments Intel AMT manageability functionality will be accessible (for example, by defining trusted domains).
- Use a registered ISV application to write/delete data on the flash repository (i.e., the 3PDS area).
- Identify the user's system on the enterprise network via a UUID.
- Unprovision AMT and delete Flash contents.
- Remotely connect to systems even outside of the Enterprise network using preconfigured Client-Initiated-Remote-Access (CIRA) profiles.

Does Intel AMT allow an authenticated IT administrator to access a user's local hard drive(s)?

During a remote management session, the IT administrator does have access to the user's local hard-drives. What this means is that the IT administrator could read/write files from the user's hard disk, for instance, to repair the user's system by recovering or reinstalling a faulty application or OS. Intel AMT supports two features that help mitigate potential privacy risks raised by providing IT administrators with access to this type of information: IMSS and Audit Logging. Audit Logging capabilities provide a layer of administrator accountability by logging instances of IT administrator access to user systems via Intel AMT. However, what events are actually logged are defined by the auditor, which in the enterprise is not typically the user. While Intel recommends to its customers that remote access to the Intel AMT system is the type of information that should be logged, it is possible that this information will not be available to users in some enterprise environments. Information regarding how IMSS can provide users with notifications of instances where IT administrators have accessed their system is provided immediately below.

Does Intel AMT KVM Redirection allow an authenticated IT administrator to take remote control of a user's PC as if they are physically sitting at their keyboard?

During a remote management session with KVM redirection, the IT administrator does have control of the user's PC as if they were sitting at their keyboard. With respect to the KVM redirection session, Intel AMT enables the requirement that a KVM session cannot be started without the explicit consent from the user (KVM opt-in). To enforce the user's consent to opt-in to the redirection session, a secure output window ("sprite") is displayed on the user's screen, on top of any other window, in which the user is prompted to read out to the IT administrator a randomly-generated number. Only if the IT administrator types in the correct session number will the KVM session begin. Once a valid KVM session was invoked, the user's entire screen will be surrounded by a Red bar – indicating that an IT administrator is in the process of a KRM remediation session. This Red bar will persist as long as the session is active.

According to the OEM's settings, SOL/IDER or KVM features in Intel AMT are enabled or disabled in the BIOS. The requirement for KVM opt-in may be changed by the IT administrator through BIOS settings. Intel recommends utilizing the obligation for the user's consent in order to maintain his privacy.

How can the user tell whether an IT administrator has accessed the system through Intel AMT?

The IMSS icon enables and supports user notifications for several events, including whether an IT administrator is accessing or has accessed their system through the opening/closing of a remote redirection session (i.e., SOL/IDER), as well as System Defense activation and Remote-Boot of the user's system by an IT administrator. However, the events that are actually enabled by the IMSS, in an enterprise setting, are defined by an IT administrator, not the user. While Intel recommends that those enterprises deploying Intel AMT systems enable the IMSS notifications referred to in this paragraph, it is possible that information regarding remote connections to the Intel AMT system may not necessarily be available to all users.

How can a user clear all Intel AMT configuration and private data?

Intel AMT provides BIOS options to partially/fully unprovision an AMT system. Intel recommends end-users to fully unprovision a system before resale/recycling and verify that AMT is fully unprovisioned if you purchase a used AMT capable system.

Privacy statement updates

We may occasionally update this privacy statement. When we do, we will revise the last updated date at the top of the privacy statement.

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For more information

Should you have any questions or would like more information about this privacy supplement, please use [this form](#) to contact us.

Intel Cookies and Similar Technologies Notice

Our Sites (as defined below) use Cookies and Similar Technologies to ensure that we give our visitors the best possible experience by providing you personalized information, remembering your marketing and product preferences, and helping you obtain the right information. You can find out more about Cookies and Similar Technologies, how we use them, and [how to control them](#) below.

Use of Cookies and Similar Technologies

This Notice describes how Intel, our partners, and our other third parties use Cookies and Similar Technologies (such as pixel tags, web beacons, clear GIFs, JavaScript, and local storage). We will refer to these Cookies and Similar Technologies simply as “Cookies” for the rest of Notice. We will also describe what options you may have regarding those Cookies. This Notice covers Intel’s use of Cookies that may be used in connection with the web sites (including mobile web sites and apps) owned and controlled by Intel (the “Sites”).

In some cases, we may use Cookies to collect information that is personally identifiable, or that can become personally identifiable if we combine it with other information. In such cases, the [Intel Privacy Notice](#) will apply in addition to this Intel Notice.

What are Cookies and Similar Technologies?

Cookies are small files—usually consisting of letters and numbers—placed on your computer, tablet, phone, or similar device, when you use that device to visit a web site. Cookies are widely used by web site owners to make their web sites operate, work more efficiently, and provide analytic information. These are the different types of Cookies we and our service providers may use on our Sites:

- **Essential Cookies.** These Cookies are required for the operation of our Sites (for example, to enable you to log into secure areas of our web site or use a shopping cart). These Cookies enable you to move around the Sites and use their features. Disabling these Cookies will encumber the Sites’ performance and may make the features and service unavailable.
- **Analytics and Customization Cookies.** These Cookies allow us to analyze activities on our Sites and on other sites where we post content in order to improve and optimize the way our Sites work. For example, we may use these types of Cookies to ensure that visitors can easily find the information they are looking for on our web sites. One way we do this is to recognize and count the number of visitors and see how they move around our web site when they are using it. Analytics cookies also help us measure the performance of our advertising campaigns in order to help us improve our advertising campaigns and to optimize our Sites’ content for those who engage with our advertising.
- **Functionality Cookies.** These Cookies are used to recognize you when you return to our Sites. This enables us to personalize our content for you, greet you by name, and remember your preferences (for example, your choice of language or region).
- **Advertising Cookies.** These Cookies record your online activities, including your visits to our Sites, the pages you have visited, and the links and advertisements you have clicked. One purpose of this is to help make the content displayed on our Sites more relevant to you. Another purpose is to allow us and our service providers to deliver advertisements or other communications to you that are designed to be more relevant to your apparent interests. When we and our service providers do so, this also involves partners such as publishers, data management platforms, and demand side platforms that help to manage the data. For example, if you look at one page on one of our Sites, we may cause an advertisement to be delivered to you, on our Sites or on other sites, for products referenced on that page or for similar products and services. We and our service providers and partners may also append other data to information collected by these Cookies, including information obtained from third parties, and share this information with third parties for the purpose of delivering ads to you.

How does Intel Collect and Use Other Information?

We and our service providers may use Cookies for a variety of purposes, including to:

- Help us and third parties obtain information about your visits to the Sites;
- Process your orders;
- Analyze your visiting patterns to improve our Sites;
- Deliver advertising, communications, and content from us and third parties, on our Sites and those of third parties, specific to your interests;
- Remember your language and other preferences;
- Help you obtain information you are looking for;
- Provide a safe and secure service for online transactions;
- Measure how many people use our Sites, and how they use them, to keep our Sites running efficiently and to better understand our Sites’ audiences.
- If you register on one of our Sites, or otherwise provide us with your personal information, we may associate that information with other information we collect from or about you or that you provide, information regarding your use of our Sites, or information we receive from or about you from third parties. We will use this combined data for marketing and analytics purposes.

How Long do Cookies Stay on My Device?

Other Cookies operate from the time you visit an Intel service to the end of that particular web browsing session. These Cookies expire and are automatically deleted when you close your Internet browser. These Cookies are called “session” Cookies.

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Some Cookies will stay on your device between browsing sessions—they do not expire when you close your browser. These Cookies are called “persistent” Cookies. The length of time a persistent Cookie stays on your device varies from Cookie to Cookie. We and others use persistent Cookies for a variety of purposes, such as to store your preferences so that they are available for the next visit, and to keep a more accurate account of how often you visit our Sites, how often you return, how your use of the Sites may vary over time, and the effectiveness of advertising efforts.

Who Puts the Cookies on My Device?

Cookies may be placed on your device by Intel as the Site operator. These Cookies are called “first party” Cookies. Some Cookies may be placed on your device by a party other than Intel. These Cookies are called “third party” Cookies. For example, an Intel partner may place a third party Cookie to enable online chat services.

Cookies may also be used that allow us and third parties to know when you visit our Sites, and to understand how you interact with e-mails, advertisements, or other content. Through Cookies, aggregate and other information not identifying individual users (such as your operating system, browser version, and the URL you came from, including from e-mails and advertisements) may be obtained and used to enhance your experience and understand traffic patterns. This technology counts the number of users who visit a particular service from specific banner advertisements outside the Intel Site or who clicked on links or graphics included in e-mail newsletters received from Intel. It is also used as a tool to compile aggregated statistics about how Intel Sites are used, to perform analytics and help us to optimize our Sites, and to help serve you advertising based on your interests, as described in further detail below.

How does Intel Use Online and Mobile Advertising?

We and third parties, including technology partners, and service providers engage in interest-based advertising to deliver advertisements and personalized content that we and other advertisers believe will be of interest to you. To the extent third party vendors are using Cookies to perform these services for Intel or others, Intel does not control the use of this technology or the resulting information, and is not responsible for any actions or policies of such third parties.

Ads may be delivered to you based on your online or mobile behavior (on Intel Sites and non-Intel sites), your search activity, your responses to one of our advertisements or e-mails, the pages you visit, your general geographic location, or other information. These ads may appear on our Sites or on third party web sites. The technology partners with whom we work to help us conduct interest-based advertising may be members of self-regulatory associations such as the [Network Advertising Initiative \(NAI\)](#) and the [Digital Advertising Alliance \(DAA\)](#). For Sites directed at persons located in the European Union, we may work with technology partners who are members of the [European Digital Advertising Alliance \(eDAA\)](#). You may also see advertisements for third parties on Intel Sites or other web sites or properties, based on your visits to, and activities on, Intel Sites and other sites.

How do I Manage Cookies?

You can decide whether or not to accept Cookies. One way you can do this is through your Internet browser's settings. Most Internet browsers allow some control of most Cookies through the browser settings (Please note that if you use your browser settings to block all Cookies you may not be able to access parts of our web site.). The following web sites provide information on how to adjust the Cookies settings on some popular browsers:

- [Apple Safari*](#)
- [Google Chrome*](#)
- [Microsoft Internet Explorer*](#)
- [Mozilla Firefox*](#)

You can also use a browser plug-in such as [Ghostery*](#) from Ghostery, Inc. or the [Tracking Protection List*](#) from TRUSTe. (A browser plug-in is a piece of software which adds extra capabilities to your browser—for example, to play video or scan for viruses.) Adobe Flash Player* is software for viewing multimedia on a computer. Web sites that use Adobe Flash* may store flash cookies on user's devices to remember settings, preferences, and usage similar to other types of Cookies. These flash Cookies may also be known as Flash Local Shared Objects (LSOs). Intel may use Flash LSOs to provide special content, such as video and animation playback. You can find a good summary of how to manage Flash LSOs at http://www.macromedia.com/support/documentation/en/flashplayer/help/settings_manager03.html.

To find out more about interest-based advertising and your choices, visit these sites: [Digital Advertising Alliance](#), the [Network Advertising Initiative](#), and the [Interactive Advertising Bureau \(IAB\) Europe](#). You can opt out of the use of Cookies to tailor content or advertising to you by visiting the following links. Note that if you choose to opt out, you won't necessarily see fewer ads. However, the ads you see may be less relevant to your interests.

- http://www.networkadvertising.org/managing/opt_out.asp
- <http://www.aboutads.info/choices>

How does Intel respond to a Do Not Track signal?

There is currently no industry agreed upon response to a Do Not Track signal. At this time, Intel Services and websites do not function differently based on a user's Do Not Track signal. For more information on Do Not Track, see [All About Do Not Track](#).

Privacy at Intel

Intel is committed to privacy. For more information about Intel's approach to privacy see our [Intel Privacy Notice](#) and the [Intel Code of Conduct](#).

How to Contact Us

If you have any questions about how Intel uses Cookies, you can contact Intel by using the [Contact Us](#) form or send a letter to the mailing address below. Please include your contact information, the name of the Intel web site or service, and a detailed description of your request or Cookie concern.

Intel Corporation
ATTN: Privacy
M/S RNB4-145
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Santa Clara, CA 95054 USA

This Notice updates and supersedes [previous versions](#). We may change this Notice at any time.

The "LAST UPDATED" section at the bottom of this page lists when this Notice was last revised. Any changes to this Notice will become effective when we make the revised Notice available on or through the Sites.

LAST UPDATED: March 20, 2015

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

INTERCEDE GROUP

INTERCEDE GROUP LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions.

(A) Reserved.

(B) "Documentation" means the manuals, handbooks and other written materials related to the use of the MyID Products, whether in hard copy or soft copy form, that Intercede provides and that customarily accompany the MyID Products.

(C) "MyID Products" mean the MyID Software and Documentation provided to Customer under this Agreement.

(D) "MyID Software" means the software licensed by Customer under this Agreement, consisting of a series of instructions or statements in machine-readable, object code form only.

2. License.

(A) License for MyID Software. Intercede hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable license to use the MyID Software in accordance with the instructions contained in the Documentation. Customer may make a reasonable number of copies of (1) the MyID Software for backup, testing, disaster recovery or archival purposes only and (2) the Documentation for its internal use only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the MyID Software and Documentation and does not remove any such marks from the original.

(B) Restrictions on License for MyID Software.

(1) Incorporation of Restrictions in Invoice and Other Documents. Customer's purchase order, sales quotation or invoice, or user license certificate for the MyID Products may contain limitations with respect to the number of users, servers, asserting and relying parties, functionality options and/or other restrictions. In such a case, such limitations and restrictions are incorporated herein by reference.

(2) Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a "need to know" who are bound in writing by non-disclosure obligations suitable to protect Intercede's interests in the MyID Software but no less restrictive than Customer's obligations herein), (b) copying (except as set forth in Section 2(A) above), (c) disclosure to any third party of the results of any benchmarking or competitive analysis of the MyID Software that Customer may perform, or (d) sublicensing or other dissemination of the MyID Software, in whole or in part, to any third party without Intercede's prior written consent.

(3) Third Party Software. If the MyID Software contains or is bundled with third party software, then Customer may use such third party software solely (a) for the purpose such software is included with the MyID Software and (b) for use with the particular MyID Software that Customer has licensed from Intercede as set forth in the Documentation. Customer shall not use any third-party software embedded in or bundled with the MyID Software as a standalone program or in any way independently from the MyID Software.

(4) No Modification of MyID Software. Customer shall not modify, enhance, translate, supplement, create derivative works from, reverse engineer, reverse compile or otherwise reduce the MyID Software to human readable form without Intercede's prior written consent.

3. Ownership and Intellectual Property Rights.

(A) Ownership of MyID Products. Intercede is the exclusive owner of the MyID Software and Documentation (including revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that Intercede may develop, conceive or deliver under this Agreement, including all patents, copyrights and other intellectual property rights thereto.

(B) Ownership of Trademarks. By this Agreement, Customer acquires no rights of any kind in or to any Intercede trademark, service mark, trade name, logo or product designation and shall not make any use of the same for any reason except as expressly authorized by this Agreement or otherwise authorized in writing by Intercede. Customer shall cease to use in any manner such markings or any similar markings upon the expiration or termination of this Agreement.

4. Reserved.

5. Warranty.

(A) MyID Software Warranty. Intercede warrants that the MyID Software will operate in material conformance to the Documentation for such MyID Software during the first 90 days after Customer's initial receipt of the MyID Software (the "Warranty Period"). Intercede does not warrant, however, that the MyID Software or any portion thereof is error-free. If Customer discovers a non-conformity in the MyID Software during the Warranty Period, then

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Customer shall submit to Intercede a written report describing the non-conformity in sufficient detail to permit Intercede to reproduce such non-conformity. If Intercede successfully reproduces the reported non-conformity and confirms that it is a non-conformity, then Intercede shall use reasonable efforts, at its option, to (1) correct the non-conformity, (2) provide a work around or software patch (a "Fix"), or (3) replace the MyID Software. If Intercede determines that none of these alternatives is reasonably available, then, upon Customer's request, Intercede shall refund any payments that Customer has made for the affected MyID Software and accept its return. This warranty applies only to the initial delivery of the MyID Software. All Fixes provided by Intercede constitute MyID Software hereunder and are governed by the terms hereof. Intercede warrants that each Fix will operate in material conformance to the Documentation for the applicable MyID Software during the first 30 days after Customer's initial receipt of such Fix or during the remainder of the initial Warranty Period, whichever is greater.

(B) Limitations of Warranty. The foregoing warranties do not apply if (1) repair or replacement is required as a result of causes other than normal use, including, without limitation, repair, maintenance or modification of the MyID Products by persons other than Intercede authorized personnel; Customer's accident, fault or negligence; operator error; Customer's failure to incorporate any Fixes that Intercede makes available to Customer; use of the MyID Products other than as set forth in the Documentation; or causes external to the MyID Products such as, but not limited to, failure of electrical power or fire or water damage; or (2) the MyID Products are used with software or equipment other than that for which they were designed as set forth in the Documentation.

(C) WARRANTY DISCLAIMER. OTHER THAN INTERCEDE'S EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, INTERCEDE AND ITS LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS A CORRECTION, FIX OR REFUND AS SET FORTH IN THIS SECTION 5.

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

1 INTRODUCTION

1.1 Purpose of the Service Level Agreement

This Service Level Agreement (SLA) provides an understanding of the service level expectation and defines a benchmark for measuring the performance of the service.

1.2 Service Level Agreement Period

This SLA will remain valid for a period specified on an ordering document.

2 Incident Reporting

All incidents must be reported through to the Help/Support Desk. Support will only be available between 9.00 am and 5.00 pm EST during normal US working hours, excluding US public holidays. Support will only be given using the English language.

Any support required outside this agreement must be agreed separately and Intercede reserve the right to make a time and materials based charge for this support.

The help desk can be contacted via support@intercede.com. All requests for support must be made by agreed nominated contacts (NC) from within the ordering activity. There will be 2 valid nominated contacts that have appropriate knowledge of the Intercede product set. Ordering Activity can purchase the right to nominate more than 2 nominated contacts on a separate ordering document.

Prior to any call to the help desk, it is the nominated contacts responsibility to check all basic system pre-requisites as defined in the manual, including troubleshooting. Intercede reserve the right to make a charge for support calls that fall into this category, by not being fully pre-checked.

All requests for support must provide details of the Company Name, Product Name and version, System details and a description of the issue, and where appropriate system and product log files.

All support calls will be registered in a call logging system, assigned a severity code, and allocated a unique reference number. Nominated contacts will be advised of the unique reference number on receipt of the support call. This severity code would be determined by agreement between Intercede Ltd and the nominated contact. The call would then be managed to resolution by Intercede

Any activities relating to each incident will be logged in the call logging system for monitoring and management reporting.

Once reported, all incidents will remain active, until ordering activity agrees to the successful resolution of the issue. At this stage the incident will be closed.

In the unlikely event that an on-site visit is required to resolve the support issue, Intercede reserve the right to make a charge for support and/or expenses dependent on the source of the issue.

2.1 Severity Codes

Severity - High

Critical part of system unavailable or major (or potentially major) impact on business.

Target response: 4hrs (and regular updates every hour) unless the call is placed after 4pm EST during the working day, in which case during the next working morning.

Severity - Medium

Part of system unavailable but non critical as the users can adapt business practices to get around the problem in the short term.

Target response: Same day unless call is placed after 10am EST, in which case next day.

Severity - Low

No immediate impact on business, inconvenient errors.

Target response: Next working day or as agreed with the caller requesting support

2.2 Incident Progressing

Each incident will remain with the support department who will update the status of the incident as each action is taken. Responsibility for the incident will remain with the Intercede Ltd support department to manage through to resolution to sign off by ordering activity.

Should further information be required the Intercede support department will contact the originator of the incident. If the originator contacts the Help/Support Desk with regard to a specific incident, the incident reference number must be quoted.

2.3 Escalation Procedures

Best endeavours will be made to answer calls effectively and it is expected that the customer will provide all such details as are requested by Intercede to help to resolve the given issue.

Intercede will process each call log to a completion agreed with the customer.

If the incident is not responded to within the agreed times specified against severity (as in 2.1), ordering activity may initiate the relevant escalation procedure.

The levels of escalation would be agreed and will typically be:

	Intercede	Ordering Activity
Level 1	Help/Support Desk	Nominated Contact
Level 2	Support Manager	IT / Project Manager
Level 3	Product Manager	Director

The levels assigned to the functions above are used in the escalation procedures shown below:

Severity - High	Level 2	When incident reported
	Level 3	Within 4 hours
Severity - Medium	Level 2	Within 1 day
	Level 3	Within 5 days
Severity - Low	Level 2	Within 5 days or As agreed

NOTE: Both Intercede and ordering activity will be responsible for communicating to the appropriate personnel within their respective organisations should escalation be necessary.

3 Problem Management

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The Intercede Help/Support Desk would monitor incidents using response and resolution targets.

Response means the support team acknowledging receipt of the incident to the ordering activity nominated contact, agreeing the severity of the call, requesting further information as necessary, and conducting an initial investigation into the incident.

Resolution means providing an agreed solution to the problem. This could take the form of a short-term work around to meet the immediate need, or an agreement that the problem will be resolved in the next product release.

Intercede can 'stop the clock' while awaiting action or information (such as log file) from ordering activity.

4 Reserved.

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

INTERMEC

INTERMEC LICENSE, WARRANTY AND SUPPORT TERMS

1.0 Definitions

- 1.1 "Documentation" means the materials accompanying the Software which describe its functions and how to install and use the Software.
- 1.2 "Intermec" means Intermec Technologies Corporation, and its affiliates..
- 1.3 "Revision" means any correction, modification, update, enhancement, or new version of the Software or Documentation.
- 1.4 "System" and "Devices" means the Intermec computer equipment You acquired and on which the Software was pre-installed or onto which it is to be installed.
- 1.5 "Software" means the computer program(s) acquired and installed on the System or any Revisions thereto. This may include programs written by Intermec as well as operating systems and application programs written by others which have been provided to You or installed on the System. Software will be provided to You in object code form only. The Software includes any disks or media on which it is recorded, any printed Documentation or any "on-line" or electronic Documentation.
- 1.6 "You" or "Your" refers to the Ordering Activity licensed to use the Software under this Attachment A.

2.0 License

- 2.1 Contractor hereby grants You a license to use the Software subject to the following terms and conditions.
- 2.2 The Software is licensed, not sold. Contractor hereby grants You a revocable, non-exclusive, terminable, limited license to use the Software on the System(s) for Your own internal business purposes. No other right or license is granted or implied. You agree not to modify, copy, distribute or otherwise disclose the Software without the prior written consent of Contractor. You further agree not to translate, reverse engineer, disassemble, de-compile, or otherwise attempt to discover the underlying source code of the Software. This license will terminate when You no longer own or You cease to use the System(s) on which You are licensed to use the Software.
- 2.3 You may not duplicate or copy the Software except that You may make a single copy of the Software solely for archival purposes. The archival copy must bear the copyright notices appearing in the original.
- 2.4 You may not sell, lease, rent, assign, sublicense, share, or transfer the Software except that You may transfer all of Your rights under this Attachment A as part of a sale or transfer of the System(s). Such a sale or transfer may only be made if You retain no copies of the Software, You transfer all of the Software (including any media, archival copies, upgrades and Documentation) and the recipient agrees to abide by the terms of this Attachment A. An upgrade may not be transferred unless You transfer all prior versions of the Software. In the event of any such transfer, You will remain liable and responsible to Contractor for the performance of all of Your duties and obligations under this Attachment A.
- 2.5 The Software is protected under the copyright laws of the United States and international copyright treaties, as well as other intellectual property laws and treaties. You acknowledge and agree that nothing in this Attachment A gives You any right, title or interest in the Software except the limited rights expressly granted herein. You acknowledge and agree that some or all of the Software may have been developed by an independent third party software supplier which holds copyright or other proprietary rights to the software product.
- 2.6 You may not remove, intentionally cover or alter any proprietary notices, copyright notices, labels or marks that are contained in or on the Software.
- 2.7 You agree that You will not export or import any portion of the Software to any country that is not party to either: (i) The Berne Convention of 1989, (ii) The Universal Copyright Convention, (iii) The Buenos Aires Convention, or (iv) a treaty with the United States of America (U.S.A.) which allows for the recognition of the property rights claimed by Intermec or its suppliers in the Software.
- 2.8 You agree to use the Software only in accordance with all applicable laws and regulations, including all applicable privacy laws.

3.0 Warranty

- 3.1 Contractor provides software on an "as is" basis only.
- 3.2 CONTRACTOR FURTHER DISCLAIMS THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE. TO THE EXTENT PERMITTED BY LAW, THERE ARE NO WARRANTIES, CONDITIONS OR TERMS, WHETHER EXPRESS OR IMPLIED BY STATUTE, TRADE USAGE OR COURSE OF DEALING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR TITLE. OTHER REPRESENTATIONS OR AFFIRMATIONS OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS REGARDING PERFORMANCE OF THE SOFTWARE NOT CONTAINED IN THIS ATTACHMENT A, WILL NOT BE BINDING ON INTERMEC OR ITS THIRD PARTY SOFTWARE SUPPLIERS.

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4.0 Data Charges

- 4.1 You understand and acknowledge that the use of the Software with mobile devices may result in the transmission of data to and from the mobile device and that such transmission of data to and from your mobile devices could result in additional carrier or service provider charges to You. CONTRACTOR DISCLAIMS ANY LIABILITY FOR AND IS NOT RESPONSIBLE FOR ANY CARRIER OR INTERNET SERVICE PROVIDER DATA COSTS OR CHARGES INCURRED BY YOU IN CONNECTION WITH YOUR USAGE OF THE SOFTWARE.

5.0 Compatibility

- 5.1 The Software is not compatible with all environments. Contact Intermec for information about hardware and/or software compatibility.

6.0 Support

- 6.1 Software support may be obtained from www.intermec.com or other location indicated in the Documentation. Contractor through Intermec will be Your primary contact for support even if the Software was written by one of Intermec's suppliers.

7.0 U.S. Government Acquisition

- 7.1 This provision applies to all acquisitions of this Software by or for the United States federal government. By accepting delivery of this Software the government hereby agrees that this Software qualifies as "commercial" computer software within the meaning of FAR Part 2.101, DFARS Part 227.7202-1, and DFARS 252.227-7014(a) (June 1995). The terms and conditions of this Attachment A will pertain to the government's use and disclosure of this Software, and will supersede any conflicting contractual terms or conditions. If this license fails to meet the government's minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to return this Software unused to Intermec.

EXHIBIT 1 – PRODUCT WARRANTY

Contractor warrants the hardware products to be free from defects in material and workmanship under normal use and service. Contractor's obligation under this warranty is limited to correcting the defect in the product or any part thereof which is defective in material or workmanship and which within one (1) year from the date of shipment to Ordering Activity is returned to Contractor through Intermec with transportation charges prepaid. Ordering Activity must obtain a Return Material Authorization before the product may be returned. If Contractor determines the product failed due to defects in material or workmanship, Contractor shall repair or replace (at Intermec's option) the defective product free of charge.

Contractor's warranty for supplies; including spare parts, printheads, cutter assemblies, media, pre-printed labels and batteries is limited solely to free-of-charge replacement of such supplies within ninety (90) days of shipment to Ordering Activity. Replacement shall be determined by Contractor wherein such supplies fail to meet applicable specifications and were purchased directly from Contractor for use with Intermec products and provided Ordering Activity has complied with the handling, storage and shelf life requirements as specified by Intermec. Contractor shall have no responsibility whatsoever for consumable supplies purchased from any other source.

Contractor provides software on an "as is" basis only.

These warranties do not extend to any defect, fault, or accident, which is caused by improper or inadequate maintenance, installation or use by Ordering Activity or its customers; Ordering Activity's software, hardware or interfacing; modifications to the product(s) not authorized by Contractor; misuse or misapplication of the product(s) by Ordering Activity or its customers; operation of the product(s) outside environmental or electrical specifications; gross negligence, accident, or disaster.

Contractor shall not warrant and hereby specifically disclaims any express or implied warranty with respect to coverage by Intermec RF (Radio Frequency) products unless Contractor has performed a site survey installed the RF products. Ordering Activity releases Contractor from any and all liability related to coverage by the RF products if Contractor has not performed the described services.

Any representation or warranty made by any other person, including distributors, resellers, dealers, employees and representatives of Contractor, which are inconsistent or in conflict with or additive to the terms of this Warranty, shall not be binding on Contractor unless reduced to writing and approved in writing by an officer of Contractor.

THE ABOVE WARRANTIES ARE EXCLUSIVE OF, AND IN LIEU OF, ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. NO IMPLIED STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. CONTRACTOR SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY ORDERING ACTIVITY ARISING FROM DELAY IN THE REPLACEMENT OR REPAIR OF PRODUCTS UNDER THE ABOVE WARRANTY.

EXHIBIT 2 – MAINTENANCE SERVICES

MEDALLION STANDARD

Medallion *Standard* services are optional upgrades from the Intermec Standard Warranty that provide additional coverage for hardware failure and general wear and tear. Four levels of service are available to best suit your requirements covering both return to depot repair and on-site response offerings.

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Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of up to 3 years from the initial hardware purchase. Extended coverage is also available for up to 3 years from the production end of build of the model. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware components and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;
- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this service available 5 days/week, 8 hours/day – excluding public and local holidays;
- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - A return to depot repair service with three levels of turnaround;
 - Covers: parts, labor, and return freight;
 - Preventative maintenance is performed on the unit, where appropriate;
 - Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.
- For Medallion Standard – *Gold and Platinum*:
 - An on-site service with two levels of response;
 - Covers parts and labor (excluding print heads);
 - Devices are diagnosed and repaired on the customers' premises.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products not covered by a valid Intermec service contract;
- Cost of carriage to an Intermec facility (Bronze & Silver only);
- Styluses, battery door covers, screen protectors, hand straps and clips;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries;
- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the customer;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment damaged during use for purposes other than for which the Equipment was designed;
- Equipment that has been damaged due to inadequate customer-provided transit packaging;
- Damage sustained due to negligence or abuse;
- Damage caused by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;
- Medallion® Standard -- *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement with a customer-owned, Intermec managed device;
- Medallion® Standard – *Gold* is an On-site service with a two business day response;
- Medallion® Standard – *Platinum* is an On-site service with a next business day response.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:
 - Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.

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- Once you have completed the RMA request, you will be issued with an RMA number.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - The address to return the faulty device(s) to will be provided during the RMA process;
 - Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.
- For Medallion Standard – *Gold and Platinum*:
 - A technician will be dispatched to arrive within the contracted timescale;
 - Service requests placed after 3pm local time, Monday to Friday will be deemed as having been placed on the next working day.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the Ordering Activity without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the RMA process outlined above;
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;
- Acknowledge responsibility for recovering your own application software after any Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - Return the faulty product to the addressed provided with the RMA Intermec in a timely manner;
 - Remove any replaceable items (SIM cards, SD cards, batteries etc).
- For Medallion Standard – *Gold and Platinum*:
 - Provide Intermec with full, safe and prompt access to the products;
 - Ensure the product is in an easily accessible location with adequate space, health and safety conditions;
 - Provide such telecommunication facilities as are reasonably required by Intermec for the performance of its obligations and for any other testing, diagnostic and remedial purposes at the Ordering Activity's expense.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

MEDALLION SELECT

Intermec Medallion Select is a return to depot repair service covering hardware failure and limited accidental damage. Upon receipt of the faulty product, Contractor through Intermec trained staff will try to replicate the fault to effect the repair. The product will then be repaired using genuine Intermec parts and a full functional test is performed on the unit, before being cleaned, re-packed and returned within contracted turnaround time.

Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of up to 3 years from the initial hardware purchase. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware products and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;
- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this Service available 5 days/week, 8 hours/day – excluding public and local holidays;
- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this Service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear or limited accidental damage sustained to screens, keypads, buttons and plastics. Covers the labor and the expedited repair or replacement of parts;
- Replacement of damaged styluses, battery door covers, screen protectors, hand straps or clips that are included with Equipment sent to the depot for repair;
- Preventative maintenance is performed on the unit, where appropriate;
- Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products outside of their normal contract term;
- Devices that are beyond economical repair;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries

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- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the Ordering Activity;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment that has been damaged due to inadequate Ordering Activity-provided transit packaging;
- Damage sustained due to chronic negligence or deliberate abuse;
- Equipment damaged by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

Medallion Select offers a return to depot repair and dispatch service on a best endeavours basis. Turnaround time is calculated as the time the faulty unit is in the Intermec Repair Center. Contracts are available providing three contracted turnaround times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement of customer-owned, Intermec managed device.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:
 - Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.
- Once you have completed the RMA request, you will be issued with an RMA number and the address to return the faulty device(s) to.
- Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the customer without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the process outlined above;
- Return the faulty product to the address provided with the Intermec RMA in a timely manner;
- Remove any replaceable items (SIM cards, SD cards, batteries etc);
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;
- Acknowledge that they are responsible for recovering their own application software after any such Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

MEDALLION COMPLETE

Intermec Medallion Complete service is a return to depot repair service covering hardware failure and accidental damage. Upon receipt of the faulty product, Contractor through Intermec trained staff will try to replicate the fault to effect the repair. The product will then be repaired using genuine Intermec parts and a full functional test is performed on the unit, before being cleaned, re-packed and returned within contracted turnaround time.

Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of 3 or 5 years from the initial hardware purchase (contract must be purchased within 30 days of the hardware sale). Extended coverage is also available for up to 3 years from the production end of build of the model. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware products and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;
- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this Service available 5 days/week, 8 hours/day – excluding public and local holidays;

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- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this Service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear or accidental damage sustained to screens, keypads, buttons and plastics. Covers the labor and the expedited repair or replacement of parts;
- Replacement of damaged styluses, battery door covers, screen protectors, hand straps or clips that are included with Equipment sent to the depot for repair;
- Preventative maintenance is performed on the unit, where appropriate;
- Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products outside of their normal contract term;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries;
- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the customer;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment damaged to the extent that the Equipment serial number is no longer verifiable;
- Equipment that has been damaged due to inadequate Ordering Activity-provided transit packaging;
- Damage sustained due to chronic negligence or deliberate abuse;
- Damage caused by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

Medallion Complete offers a return to base depot and dispatch service on a best endeavours basis. Turnaround time is calculated as the time the faulty unit is in the Intermec Repair Center. Contracts are available providing three contracted turnaround times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;
- Medallion® Standard -- *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement of customer-owned, Intermec managed device.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:
 - Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.
- Once you have completed the RMA request, you will be issued with an RMA number and the address to return the faulty device(s) to.
- Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the Ordering Activity without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the process outlined above;
- Return the faulty product to the addressed provided with the RMA Intermec in a timely manner;
- Remove any replaceable items (SIM cards, SD cards, batteries etc);
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;
- Acknowledge that they are responsible for recovering their own application software after any such Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

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

1. **Scope.** This Rider and the attached Ivanti ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

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IVANTI LICENSE, WARRANTY AND SUPPORT TERMS

ATTACHMENT A - IVANTI END USER LICENSE, MAINTENANCE, AND SUPPORT SERVICES AGREEMENT

1. DEFINITIONS.

"Concurrent Users" means the maximum number of users that may concurrently use or access the Licensed Software.

"Documentation" means the user documentation IVANTI provides with the Licensed Software.

"Infringement Claim" means a claim by a non-affiliated third party against Ordering Activity asserting that Ordering Activity's use of Licensed Software in accordance with this Agreement violates that third party's patent, trademark, or copyright rights.

"IVANTI" means:

- Ivanti U.K. Limited, an English company, if Ordering Activity is purchasing any Licensed Software other than Wavelink or Naurtech branded Licensed Software and has its primary office located outside of North America, Central America, South America (excluding Brazil), (collectively, the "Americas"), Japan or the People's Republic of China.
- Ivanti International Limited, an Irish company, if Ordering Activity is purchasing Wavelink or Naurtech branded Licensed Software and has its primary office located outside of the Americas), Japan or the People's Republic of China.
- Ivanti, Inc., a Delaware corporation, if Ordering Activity has its primary office located in the Americas.
- Ivanti Comércio de Software Brasil Ltda, a Brazilian company, if Ordering Activity has its primary office located in Brazil.
- Ivanti Software K.K., a Japanese company, if Ordering Activity has its primary office located in Japan.
- Ivanti (Beijing) Information Technology Co., Ltd., a Chinese company, if Ordering Activity has its primary office located in the People's Republic of China.

"Licensed Software" means the software, in object code form, and any Documentation accompanying this End User License Agreement (EULA) or the software.

"Ordering Activity" means the person or entity licensing the Licensed Software from IVANTI pursuant to this EULA.

"Maintenance" means IVANTI's provision of Updates and Upgrades to the applicable Licensed Software.

"Node" means each electronic device using the Licensed Software including without limitation (a) a physical device such as a computer, handheld device, workstation, console, Seat, server, or any other electronic device; (b) a virtual machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device; or (c) for the IVANTI Antivirus for Mail Servers product, an electronic or virtual mailbox (e.g., a mailbox for email).

"Node Count Data" means information periodically generated by the Licensed Software about (a) the quantity and type of current usage of the Licensed Software on a server, and (b) the non-personal, encrypted hardware configuration of that server.

"Seat" means the number of Concurrent Users authorized to use the Licensed Software.

"Support Services" means the services regarding installation, configuration and usage detailed at <http://www.ivanti.com/en-US/company/legal/support-terms> and available to Ordering Activity for purchase.

"Update" means content used to update the License Software and includes bug fixes, minor enhancements and patches, but does not include Upgrades.

"Upgrade" means a new version of Licensed Software that replaces a pre-existing version of such Licensed Software.

"User" means a natural person employed by or who otherwise provides services (whether as an independent contractor or otherwise) to Ordering Activity who is supported with or uses the Licensed Software.

2. LICENSES. The licenses that are available from IVANTI include, without limitation, the following:

(A) FULL-USE LICENSE: A "Full-Use License" is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Ordering Activity's organization on the total number of Nodes set forth in the purchase order. A Full-Use License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the Full-Use License.

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(B) SUBSCRIPTION LICENSE: A "Subscription License" is a non-exclusive, non-transferable, limited license to copy, install and use certain Licensed Software within Ordering Activity's organization on the total number of Nodes set forth in the purchase order. Unless a different term is specified in the purchase order to IVANTI, the term of Subscription License or renewal thereof is one (1) year. During the term of the time-limited subscription, Ordering Activity is entitled to receive Maintenance for the Licensed Software (additional Support Services also may be available for purchase by Ordering Activity). If the Subscription License is provided as software as a service (SaaS), the terms and conditions found at www.ivanti.com/saas/termsandconditions/ shall also apply in addition to the terms and conditions contained within this EULA.

(C) USER-BASED LICENSE: A "User-Based License" is a non-exclusive, non-transferable, perpetual, and limited license to copy, install and use the Licensed Software within Ordering Activity's organization to support the total number of Users set forth in the purchase order. A User-Based License does not include Maintenance or Support Services. Maintenance and Support Services must be purchased in addition to the User-Based License.

3. LICENSE GRANT. IVANTI hereby grants Ordering Activity a non-exclusive, non-transferable, restricted, license to use the Licensed Software in accordance with the type of license and subject to the quantity of Nodes purchased by Ordering Activity. Ordering Activity may make a copy of the Licensed Software only as needed for archival and backup purposes. Ordering Activity may permit third party consultants and contractors (such as third-party supplier(s) of information services) to use the Licensed Software on Ordering Activity's behalf provided that (a) all such use is in accordance with the terms and conditions of this EULA, and (b) Ordering Activity assumes full responsibility and liability for any use of the Licensed Software by such third parties in any violation of this EULA, including without limitation use in excess of the licensed number of Nodes. Ordering Activity agrees not to override or bypass the activation process or any security feature, authorization, activation, or reactivation of the Licensed Software or to assist others in doing the same.

4. NODE COUNT VERIFICATION AND AUDIT. Ordering Activity agrees that IVANTI may periodically verify that Ordering Activity's usage of the Licensed Software does not exceed the quantity of Nodes or User-Based Licenses purchased, subject to applicable Government security requirements.

Periodically, the Licensed Software on each server will generate Node Count Data. Each time the Licensed Software generates Node Count Data on a server, Ordering Activity agrees to send, within thirty (30) days of generation, the Node Count Data to IVANTI either automatically by the Internet or manually by email. If the node count verification process shows that Ordering Activity, including its third party consultants or contractors using the Licensed Software for Ordering Activity, is using more than the number of Nodes or other Licensed Software for which licenses have been purchased, IVANTI shall invoice Ordering Activity for such additional Nodes and/or Licensed Software at the then-current GSA Schedule price. Ordering Activity agrees not to override or bypass this node count verification process or assist others to do the same. With respect to User-Based Licenses, Ordering Activity agrees to provide IVANTI with documentation evidencing the total number of Users within thirty (30) days of IVANTI's request.

5. USE RESTRICTIONS. IVANTI reserves all rights not expressly granted to Ordering Activity herein. Without limiting the generality of the foregoing, Ordering Activity shall not and shall not allow others to: (a) copy, modify, adapt, rent, lease, sell, distribute, export, re-export, assign, sublicense, translate, transfer, or reprogram the Licensed Software or any portion thereof except as provided in this EULA; (b) use the Licensed Software in a service bureau, facility management, service provider, timeshare, or other similar type of environment, (c) reverse engineer, decompile, translate, merge, or disassemble the Licensed Software; (d) create derivative works based upon the Licensed Software; (e) use the Licensed Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, or to perform any activity which breaches the rights of any third party; (f) take any actions that would cause the Licensed Software to become subject to any open source or quasi-open source license agreement not otherwise applicable; or (g) transfer any Licensed Software or Ordering Activity's license rights under this EULA, in whole or in part without IVANTI's prior written consent, which consent shall not be unreasonably withheld or denied.

THE LICENSED SOFTWARE IS NOT INTENDED OR LICENSED FOR AND ORDERING ACTIVITY SHALL NOT USE THE LICENSED SOFTWARE IN ANY ENVIRONMENT IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

6. OWNERSHIP OF LICENSED SOFTWARE. The Licensed Software is the proprietary property of IVANTI or its licensors. No title to or ownership of any Licensed Software is transferred to Ordering Activity. The Licensed Software is licensed to Ordering Activity, not sold. All rights, title and interest in and to the Licensed Software (including any Update or Upgrade thereto), including all worldwide intellectual property rights, shall remain with IVANTI, its licensors, vendors and/or suppliers, as the case may be. Except as otherwise expressly provided, IVANTI grants no express or implied right under any IVANTI patent, copyright, trademark, or other intellectual property right.

7. COPYRIGHTS, TRADEMARKS, AND PATENTS. The Licensed Software is copyrighted and protected by the laws of the United States and other countries, and by international treaty provisions combined with patents and trademarks. In no circumstance may Ordering Activity remove or alter the copyright notice, trademark notice, or other proprietary notices from the Licensed Software. Ordering Activity agrees to faithfully reproduce and include all copyrights, trademarks, and other proprietary notices on any authorized copy of any Licensed Software. IVANTI is either a registered trademark or trademark of IVANTI, Inc. or its affiliates in the United States and/or other countries. One or more patents, as well as other patent pending technology, may apply to Licensed Software.

8. MAINTENANCE AND SUPPORT SERVICES. Nothing in this Agreement entitles Ordering Activity to any Support Services and/or Maintenance of the Licensed Software without purchasing such Support Services and/or Maintenance.

(A) MAINTENANCE: During the term for which Ordering Activity has purchased the applicable Maintenance or subscription for the Licensed Software, Ordering Activity is entitled to Updates and Upgrades as and when they are made generally available to IVANTI's end users.

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(B) SUPPORT SERVICES: During the term for which Ordering Activity has purchased the applicable support, Ordering Activity is entitled to support in accordance with IVANTI's points-based support programs. Points expire at the end of each Support Services period and new points are calculated each renewal period. Support levels may be adjusted any time Ordering Activity purchases additional Support Services. For more information on the Ivanti support programs, see the Ivanti service portal at <http://www.ivanti.com/en-US/company/legal/support-terms>.

(C) NO OBLIGATION. IVANTI shall be under no obligation to furnish Maintenance and/or Support Services for the Licensed Software to the extent that such Maintenance and/or Support Services are necessary or desired as a result of: (i) the operation of the Licensed Software in environmental conditions or configurations outside those prescribed in the Documentation; (ii) Ordering Activity's failure to upgrade and update the Licensed Software to the currently supported versions of the Licensed Software or to maintain the Licensed Software in accordance with the standards of Maintenance prescribed in the Documentation or as specified in Maintenance or Support Services received by Ordering Activity from IVANTI; (iii) actions of any third party other than IVANTI or a third party authorized by IVANTI; and (iv) causes unrelated to the Licensed Software as delivered to Ordering Activity by IVANTI, including without limitation, modifications to the Licensed Software made by Ordering Activity or on Ordering Activity's behalf.

9. THIRD-PARTY SOFTWARE. The Licensed Software may be bundled with non-integrated hardware or other software programs licensed or sold by a licensor other than IVANTI. IVANTI DOES NOT WARRANT SUCH THIRD-PARTY PRODUCTS. Any and all such third-party products (e.g., drivers, utilities, operating system components, etc.) which may be distributed with the Licensed Software are provided "AS IS" without warranty of any kind, whether express or implied. Use of Microsoft's DCOM software, distributed with the Licensed Software, is conditioned upon Ordering Activity having a valid licensed copy of the applicable Microsoft operating system software on the computer on which the DCOM software is installed. Nothing in this EULA shall restrict, limit or otherwise affect any rights or obligations Ordering Activity may have, or conditions to which Ordering Activity may be subject, under any applicable open source licenses to any open source code contained in any Licensed Software. IVANTI makes no warranty that third-party software which Ordering Activity seeks to access using the licensed software shall be available for downloading to Ordering Activity's system.

10. LIMITED WARRANTY. IVANTI WARRANTS THAT FOR A PERIOD OF NINETY (90) DAYS FROM ORDERING ACTIVITY'S INITIAL ACQUISITION OF A LICENSE TO USE THE LICENSED SOFTWARE, THE LICENSED SOFTWARE WILL FUNCTION SUBSTANTIALLY IN CONFORMANCE WITH THE DOCUMENTATION ACCOMPANYING SUCH LICENSED SOFTWARE WHEN USED IN ACCORDANCE WITH THE ACCOMPANYING DOCUMENTATION. ORDERING ACTIVITY'S SOLE REMEDY FOR A BREACH OF THIS WARRANTY SHALL BE THAT IVANTI, IN ITS REASONABLE DISCRETION, WILL EITHER: (i) RESOLVE THE NONCONFORMITY, (ii) REPLACE THE LICENSED SOFTWARE WITH SOFTWARE OF SUBSTANTIALLY THE SAME FUNCTIONALITY, OR (iii) REFUND THE LICENSE FEES PAID BY ORDERING ACTIVITY FOR THE APPLICABLE LICENSED SOFTWARE. THIS LIMITED WARRANTY SHALL NOT APPLY TO UPDATES AND UPGRADES (IF ANY) TO THE LICENSED SOFTWARE OR IF ORDERING ACTIVITY HAS OBTAINED A TRIAL-USE LICENSE.

11. NO OTHER WARRANTIES. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, THE LICENSED SOFTWARE, MAINTENANCE AND SUPPORT SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ANY EXPRESS WARRANTY MADE OUTSIDE OF THIS EULA IS EXCLUDED AND SUPERSEDED. NEITHER IVANTI NOR ITS LICENSORS REPRESENT OR WARRANT THAT THE LICENSED SOFTWARE WILL SATISFY ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE LICENSED SOFTWARE IS WITHOUT DEFECT OR ERROR OR THAT OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE. ORDERING ACTIVITY MAY HAVE OTHER WARRANTY RIGHTS PROVIDED BY LOCAL LAW.

12. INDEMNIFICATION.

(A) INDEMNIFICATION BY IVANTI: IVANTI will, at its own expense, defend or settle any Infringement Claim and indemnify Ordering Activity for any damages finally awarded against Ordering Activity, but only if: (i) Ordering Activity promptly notifies IVANTI of any Infringement Claim; (ii) IVANTI retains control of the defense, negotiations, settlement, or compromise of any Infringement Claim; and (iii) Ordering Activity provides IVANTI with all necessary authority, information, and reasonable assistance (at IVANTI's expense). IVANTI will not be responsible for any costs, expenses or compromise incurred or made by Ordering Activity without IVANTI's prior written consent. If use of Licensed Software is permanently enjoined as the result of an Infringement Claim, IVANTI will, in its sole discretion and expense, procure for Ordering Activity the right to continue using such Licensed Software, replace such Licensed Software with non-infringing product, modify such Licensed Software so that it is no longer infringing, or, if each of the foregoing is commercially unreasonable or unduly burdensome, IVANTI may elect to refund to Ordering Activity the fees, less depreciation, received by IVANTI for such enjoined Licensed Software. Depreciation shall be determined using a straight line basis over thirty-six (36) months, commencing on the effective date for IVANTI Licensed Software and on the date of first delivery to Ordering Activity of any Licensed Software or Support Services. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(B) EXCLUSIONS: IVANTI shall not have any indemnification obligations, other responsibility or liability for any costs, expenses, or damages, settlement, or otherwise resulting from: (i) IVANTI's compliance with Ordering Activity's designs, specifications or instructions; (ii) Ordering Activity's modification (whether authorized or not) of Licensed Software; (iii) any Infringement Claim arising from Ordering Activity's combined use of Licensed Software (or any part thereof) with any Ordering Activity or other third party product; or (iv) Ordering Activity's direct or contributory infringement of any business method patent.

(C) ENTIRE OBLIGATION AND EXCLUSIVE REMEDY: The foregoing states the entire obligation and exclusive remedy of each of the parties hereto with respect to any IVANTI indemnification obligation.

13. TERMINATION OF THIS EULA. If Ordering Activity is using the Licensed Software under any timelimited license, including without limitation a Trial-Use License or Subscription License, this EULA shall terminate with regard to such Licensed Software without notice to Ordering Activity on

the last day of the specified time period. Upon expiration or termination of this EULA, Ordering Activity shall immediately cease all use of the Licensed Software and uninstall and delete all of the Licensed Software.

14. EXPORT COMPLIANCE. Ordering Activity acknowledges that the Licensed Software is exported from the United States in accordance with the Export Administration Regulations. The Licensed Software, and any product or technical information provided by IVANTI, are subject to applicable import and export regulations of the United States and/or other countries. Diversion contrary to U.S. law is prohibited. Ordering Activity agrees to comply with all applicable import and export regulations as they may be amended from time to time. Regardless of any disclosure made by Ordering Activity to IVANTI of an ultimate destination of the Licensed Software or any product or technical information, Ordering Activity agrees that it will not export, re-export or disclose (directly or indirectly) any of the Licensed Software, any product or technical information provided by IVANTI, or any portion thereof, to any country, entity or person in violation of U.S. export laws or regulations or any other law, regulation, or Government order.

15. U.S. GOVERNMENT RESTRICTED RIGHTS. The Licensed Software is provided with "RESTRICTED RIGHTS" and is deemed "commercial computer software" and "commercial computer software documentation" within the meaning of applicable civilian and military Federal acquisition regulations and any supplement thereto. Use, modification, duplication, or disclosure by the United States Government is subject to restrictions as set forth in DFARS 252.227-7014(a)(1) (JUN 1995) (DOD commercial computer software definition), DFARS 227.7202-1 (DOD policy on commercial computer software), FAR 52.227-19 (DEC 2007) (commercial computer software clause for civilian agencies), DFARS 252.227-7015 (NOV 1995) (DOD technical data - commercial items clause); FAR 52.227-14, including Alternates I, II, and III (DEC 2007) (civilian agency technical data and noncommercial computer software clause); and/or FAR 12.211 and FAR 12.212 (commercial item acquisitions), and any successor provisions. Use of the Company Products by the U.S. Government constitutes acknowledgment of IVANTI's proprietary rights therein. The Contractor or Manufacturer is IVANTI, Inc. (or its subsidiaries or affiliates), with an office at 698 West 10000 South, Suite 500, South Jordan, UT 84095, USA.

KBZ Communications, Inc.
2003 South Easton Road, Suite 308
Doylestown, PA 18901

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

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

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- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or

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any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

KBZ COMMUNICATIONS, INC.

KBZ COMMUNICATIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Warranty Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS ATTACHMENT A, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW AND SPECIFICALLY DISCLAIMS LIABILITY IN CONNECTION WITH SUCH WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

SERVICE SUMMARY

This document describes the services offerings of the KBZ ZCare Technical Support Program ("ZCare"). It outlines the deliverables by Contractor through KBZ ZCare Technical Support Services to an Ordering Activity of Contractor ("Ordering Activity"). An "Ordering Activity" is defined as either an End User customer who has purchased ZCare from Contractor for Cisco TelePresence equipment and/or systems.

Service definitions herein will focus on three core deliverables by Contractor through ZCare Technical Support Services:

1. SoftCare Software Support
2. Advanced Replacement Service
 - a. RMA Process in Support of Advance Equipment Replacement
 - b. Delivery and Collection RMA
 - c. End of Life Statement
3. Help Desk Telephone Technical Support
 - a. Help Desk Call Flow
 - b. ZCare Service Level Commitment
 - c. Escalation Procedure

This document additionally addresses Call Flow and Escalation Management for critical situations.

1. SOFTCARE SOFTWARE SUPPORT

SoftCare support is a maintenance component of the ZCare Technical Support program that makes available to the Ordering Activity, all applicable software releases. To ensure better communication and awareness of this software notification program, ZCare Technical Support Services will automatically alert the Ordering Activity when new releases are available.

The SoftCare e-mail notification will contain, at minimum, the following key information:

1. Feature list (a brief explanation of the contents and benefits of the software release)
2. Download instructions
3. Release Key information
4. WEB Release Key Generator

2. ADVANCED REPLACEMENT SERVICE

The ZCare Advanced Replacement Service provides for replacement equipment, return paperwork, and arrangement for collection of faulty equipment.

Next-day support for advanced parts exchange is available until 5:00 EST within the United States. It is the responsibility of the Ordering Activity to (1) ensure that faulty equipment is returned in original packaging provided with delivery of the replacement parts, and (2) to return and ship faulty equipment within 15 working days of receipt of the replacement equipment (unless special conditions are agreed to in advance; reviewed on a case-by-case basis).

Disclaimer: ZCare technical Support Service endeavors to deliver replacement equipment within 24 hours in the United States. However, neither Contractor nor ZCare Technical Support Services can be held liable for delays caused by events outside of our direct control.

RMA Process in Support of Advanced Parts Replacement

1. ZCare Technical Support Services will open a Work Order on an existing trouble ticket.
2. ZCare will complete an RMA with Ordering Activity shipping information, product information (serial number, part number, software version, installed options) and a fault description.
3. ZCare will forward the RMA to Cisco for processing and product shipment.
4. Replacement equipment will be dispatched from Cisco's warehouse the next business day after receipt of a correctly completed RMA. *
5. Once replacement equipment has been shipped, the warehouse will forward tracking information to ZCare Technical Support Services. Contractor through a KBZ representative will then forward this information to the Ordering Activity.
6. This policy applies Monday through Friday, local holidays excluded; regional delivery lead times apply; shipped the same day, up to 5:00 local time, for next day delivery.

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7. Larger equipment shipped as freight may take 3 to 5 days for delivery.
Note: Due to the weight and dimensions of plasmas and monitors delivery time may vary for these items.

Delivery & Collection RMA

Contractor through Cisco will send replacement parts together with return paperwork. * In this case, The Ordering Activity must:

1. Return all faulty units in the factory –supplied packaging delivered and containing the replacement parts
2. Sign and return shipping invoice and shipping documents
3. Schedule pick-up/collection of failed/replaced equipment
4. Cisco will pay shipping costs in both directions *
5. It is the responsibility of the Ordering Activity to ensure that faulty parts (1) returned in original packaging provided with delivery of the replacement parts, and (2) return shipped within 15 working days of receipt of the replacement parts (unless special conditions are agreed to in advance. This will be reviewed on a case-by-case basis).

END OF LIFE STATEMENT

The ZCare Technical Support Services commits to providing technical support and development on all components manufactured by Cisco for a period of five years beyond the announced en-of-sale-date. This support will include the following items:

- **Spare or replacement parts** in accordance with the KBZ Return Materials Authorization (RMA) process.
- **Access to ZCare Help Desk** availability 20 hours a day, 7 days a week.
- **SoftCare email notifications** of related Cisco software maintenance releases.

TELEPHONE TECHNICAL SUPPORT

The Ordering Activity may report product problems and failures to Contractor through ZCare Technical Support Services via the designated toll free number: 1-888-492-2734. All calls are entered into the call tracking system.

Help Desk Call Flow and Escalation Process

When a call or email comes into the Help Desk, the problem tracking and resolution process proceeds as follows:

- Technical support representative assigns a unique Trouble Ticket Number.
- Technical support representative requests the system serial number from the Ordering Activity. If the serial number is not available, representative will still open a ticket, but shipping and troubleshooting delays may result.
- Technical support representative assess problem, and then assigns a Case Priority Level based on criteria explained in Table 1: Case Priority Levels and Response Time Targets.
- Technical support representative dispatches technician in accordance with priority level response time.
- As deployments or milestones occur within the troubleshooting process, the ZCare Online Ticketing System is updated.
- ZCare Service level offering is based on the criteria explained in Table 1: Case Priority Levels and Response Time Targets. If escalation is required outside of this regular process, the Ordering Activity should use the escalation procedure defined under “ZCare Service Level Commitment” on page 4.

Table 1: Case Priority Levels and Response Time Targets

Priority Level	Definition of Need	Response Time Target
1. Urgent	An event or combination of events causing 100% loss of system availability	30 Minutes
2. Critical	An event or multiple events causing a continuous or chronic impact to operation	1 Hour
3. High	An event or multiple events with the potential to cause an impact to operation	4 Hours
4. Normal	A condition having no immediate impact on operation but requiring maintenance action	8 Hours/ Next Business Day aid

ZCARE SERVICE LEVEL COMMITMENT

In addition to problem solving related to Cisco TelePresence equipment, Contractor through ZCare Technical Support Services will work with the Ordering Activity to collaborate in solving network issues impacting equipment used and deployment. Table 2 describes the ZCare Service level commitment by the priority level assigned to the case.

Table 2: ZCare Service Level Commitment by Priority Level

Priority Level	Service Level
1. Urgent	An existing network is down or there is a critical impact to the Ordering Activity's business operation. Cisco, Partner and End User will commit full-time resources to resolve the situation.
2. Critical	Operation of an existing network is severely degraded, or significant aspects of the Ordering Activity's business operation are being negatively impacted by unacceptable product performance. Cisco, KBZ, and Contractor will commit full-time resources during Standard Business Hours to resolve the situation.
3. High	Operational performance of the network is impaired while most business operations remain functional. Cisco, Partner, and Ordering Activity are willing to commit resources during Standard Business Hours to restore services to satisfactory levels.
4. Normal	Information or assistance is required on Cisco product capabilities, installation, or configuration. There is clearly little or no impact to the Ordering Activity's business operation. Cisco, Partner, and

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	Ordering Activity are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

ESCALATION OVERVIEW

The ZCare Technical Support Services 24/7 Help Desk provides services escalation resulting from support that is not meeting the actual service levels outlined herein, or in a service emergency where support requirements dictate a response outside of the scope outlined herein. In this event, all escalations are to be directed to Shamus Doyle, KBZ Technical Services Manager by any of the following means:

Office: 215/348-9481 x 106 | Cell: 484/888-8034 | email: shamus.doyle@KBZ .com

Kony, Inc.
7380 W. Sand Lake Rd
Suite 390
Orlando, FL 32819

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

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

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- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or

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any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

KONY, INC.

KONY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions:

1.1 "Ordering Activity Application" means a Platform-enabled mobile application developed by or for Ordering Activity or the pre-configured mobile application included in the Kony Pre-Packaged Application that is configured for its use.

1.2 "Hosting Services" means the Program hosting services provided by Kony, if applicable, pursuant to an executed hosting agreement ("Hosting Agreement").

1.3 "Kony Studio" or "IDE" means the Kony Studio software, which is an integrated development environment that enables the development modification and deployment of a Ordering Activity Application or configuration of a Kony Pre-Packaged Application by or on behalf of Ordering Activity.

1.4 "Kony Development Cloud" or "Platform" means Kony's standard (non-Ordering Activity-specific) unified application platform for the design, development & deployment of native on-device and web based applications, comprising of Kony's integrated development environment and Kony's middleware server software, all of which support the operation and use of the Ordering Activity Application.

1.5 "Kony Pre-Packaged Applications" means a specific pre-configured mobile application that is designed and developed as a single code base with common and selectable features and functionality that will be configured using Kony Studio to provide for unique branding presentation, selectable integration capabilities, and flexibility to generate native on-device, mobile web, and/or SMS/MSS clients. A Pre-Packaged Application is bundled with an application specific run-time license to a single User of the Kony Studio and Kony's middleware server software.

1.6 "Maintenance / Support Services" means the support services provided by Contractor as described in Section 4 hereunder.

1.7 "Order" means an ordering document between Contractor and Ordering Activity that specifically references this Agreement and describes the Programs(s) licensed, pricing, license term and other terms associated with a transaction.

1.8 "Program(s)" means the executable code of the commercially released version of the Kony Studio, Kony Pre-Packaged Applications and Kony Development Cloud computer software program(s) or portion thereof made available to Ordering Activity by Kony hereunder, as specified on an Order. Programs also include releases, updates and upgrades to the Programs and documentation as may be made available to Ordering Activity by Contractor as part of Support Services.

2. Licensing:

2.1 Delivery. Upon execution of this Agreement, Contractor will provide a copy of the applicable Program(s) to Ordering Activity.

2.2 Grant of License. Contractor hereby grants to Ordering Activity a perpetual, limited, non-exclusive and non-transferable license, for the Programs specified on the applicable Order, to do the following but only to the extent that Programs are licensed by Ordering Activity on an Order (each such situation a permitted "Use"):

(a) Kony Studio. To install, execute and configure the documented development features of the Kony Studio, solely to create customized applications (including the right to embed and distribute Contractor's redistributable .exe libraries therein provided Ordering Activity maintains a fully paid production license to the Platform), improvements, extensions or interfaces to a Ordering Activity Application or Pre-Packaged Application. Kony Studio is licensed on a per "User" basis which is a single individual designated by Ordering Activity, which may include employees, agents, independent contractors or consultants located at Ordering Activity's facility.

(b) Kony Platform. To (i) as specified on an Order, install and execute a single User license of Kony Studio at Ordering Activity's site and execute a single or multiple production implementation of Kony's middleware server software by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single User license of Kony Studio at Ordering Activity's site and a single or multiple production implementation of Kony's middleware server software on Ordering Activity's server(s), each of which to (a) access and use the administrative and other functions and features of the Platform by Ordering Activity internally; and (b) allow Ordering Activity's authorized end users to access and use the end user features and functions of the Platform through supported channels; in accordance with the Order, documentation and this Agreement.

(c) Kony Pre-Packaged Applications. To (i) as specified on an Order execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform on Ordering Activity's server(s); and (iii) unlimited rights to distribute the client portion of the Pre-Packaged Application to Ordering Activity authorized end users for their personal use; both of which to allow (a) Ordering Activity to access and use the administrative and other

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functions and features of the Pre-Packaged Application internally; and (b) Ordering Activity's authorized users to access and use the end user features and functions of the Pre-Packaged Application through supported channels all in accordance with the Order, documentation and this Agreement.

(d) Documentation. To use the documentation provided by Contractor in support of Ordering Activity's permitted Use of the Programs, and to reproduce the documentation (or excerpts thereof) as are reasonably necessary to support Ordering Activity's end users.

(e) Back-Up. To reproduce and install Programs(s) on a back-up server, and execute such Programs(s) on that back-up server only for back-up, back-up testing, disaster recovery and Programs fail-over purposes when Ordering Activity's production servers are inoperative. Ordering Activity agrees to maintain accurate and current records of all locations of backup copies.

3. **Restrictions.** Ordering Activity acknowledges that the Programs and their structure, organization, source code and related documentation constitute valuable trade secrets of Kony and its suppliers. Accordingly, except as expressly permitted in Section 2.2, Ordering Activity agrees not to:
- allow Use of the Programs other than as specified on an applicable Order for which Ordering Activity has paid; or
 - distribute, sell, rent, transfer, lease, lend, sublicense, loan, assign, pledge, grant a security interest in, or otherwise make available the Programs or any part or copies thereof to any third party; or
 - use the Programs in any service-bureau, timesharing, outsourcing or fee-for-service arrangement; or
 - combine or merge a Program with or into another software or incorporate any Program or portion thereof into any compilation; or
 - disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of source code, except as permitted by applicable law to achieve interoperability with other software if Kony does not offer the means to do so; or
 - remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Programs or documentation; or
 - modify, adapt, recast, transform or otherwise prepare a derivative work of a Program or portion thereof; or
 - otherwise use or copy the Programs or permit any third party to do any of the foregoing.

4. **Maintenance / Support Services.**

During the term, Contractor will provide Ordering Activity with Maintenance / Support Services for the Programs in accordance with its Support Services policy as follows:

KonyOne™ Platform
SUPPORT SERVICE POLICY

Kony Support Services Overview

Support Services for the KonyOne Platform Programs (hereinafter "Programs") will include the following:

- Standard Web support on weekdays, excluding India holidays
- Telephone support for Severity 1 incidents on a 24x7x365 basis
- Error resolution and escalation support
- 24x7x365 access to Kony's Support Portal for trained and certified users
- Access to technical support bulletins
- Patches, corrections, updates and releases to the Program(s) as made available by Kony under Support Services.

Contractor through Kony will provide Ordering Activity's designated employee(s) access to its technical support team ("Kony Help Desk"), for technical support. Ordering Activity may contact the Kony Help Desk for Support Services through the following means:

Web: <http://support.kony.com> - For Kony trained and certified individuals (log error reports)

Web: <https://developer.kony.com> – For Ordering Activity's who have valid Program licenses (downloads, documentations, developers forum)

Phone: 1-877-777-7684 (for Severity 1 Incidents)

Definition of Support Severity and Response Times

Contractor through Kony will provide Support Services based on Error Reports logged by Ordering Activity in Kony's support portal (following Ordering Activity's initial investigation and confirmation the Error is related to the Programs). With respect to the Kony Studio "IDE" (Developer's Toolkit) and Kony Client Platforms, to ensure the validity of Error request, the submission of Error Reports must be reviewed and submitted by those employees or agents of Ordering Activity who have received Kony's IDE Developer Certification. Error Reports will be logged by Ordering Activity in accordance with the severity level definitions below. Contractor and Ordering Activity will work together to achieve consensus, should there be any disagreement in assigned severities. Severities assigned to Error Reports may change with time if mutually agreed to by both parties. For example, an issue may be initially categorized as Severity Low and upon further investigation; it may be mutually concluded by Contractor and Ordering Activity that the issue should be reclassified as Severity Medium.

Response and Target Resolution times for Errors will be measured from the time the Error Report is logged by Ordering Activity into Kony's support portal. Error Report activity will subsequently be managed and tracked through the portal.

"Error" means a Program function which does not operate in substantial conformance to Program documentation. Any feature request initiated by the Ordering Activity which is not documented in the Program documentation for the given release will be considered an enhancement feature request.

A "Critical" or "Severity 1" Error renders the Program completely unusable or nearly unusable or introduces a high degree of operational risk in Production environment. No Workaround is available. Until this Error is resolved, the Program's use is essentially halted. A large number of users and/or core Program functionality is severely impacted.

A "High" or "Severity 2" Error renders essential functionality of the Program to be consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the Program is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the Program continues to function.

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A "Medium" or "Severity 3" Error is an inconvenience or causes inconsistent behavior, which does not impede the normal functioning of the Program. It could be an Error that occurs inconsistently and affects nonessential functions or is an inconvenience which impacts a small number of users or small number of devices. It may also contain visual errors where the graphical display of the Program is not ideal, but still functioning correctly.

A "Low" or "Severity 4" Error has a small degree of significance, or is a minor cosmetic issue, or is a "one off" case. A "one off" case occurs when the Error occurs infrequently and cannot be reproduced easily. These are Errors that do not impact the daily use of the Program. A Low Error is something that does not affect normal use, and can be accepted for a period of time, but user would eventually want changed.

5. **Ordering Activity Acknowledgement and Obligations.**

5.1 Ordering Activity acknowledges and agrees that Contractor nor Kony does not monitor communications or data transmitted through the Programs or Ordering Activity Applications, nor does Contractor nor Kony have access to such communications or data, and that Contractor nor Kony shall not be responsible for the content of any such communications or transmissions. Ordering Activity shall use the Programs and Ordering Activity Applications for authorized and legal purposes. Ordering Activity is solely responsible for the activity of its users and shall ensure that they abide by all applicable laws (including but not limited to international copyright and US Export laws) in connection with Ordering Activity's and its users' use of the Programs and Ordering Activity Applications including, without limitation, those related to data privacy, international communications and the transmission of technical or personal data.

5.2 Ordering Activity acknowledges and agrees that Ordering Activity's and its users' use of the Programs and Ordering Activity Applications are dependent upon access to telecommunications and Internet services. Ordering Activity and its users shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Programs and Ordering Activity Applications, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Contractor nor Kony shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

6. **Reports.**

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

6.3 Reserved.

6.4 **Verification and Audit.** Within reasonable agency regulations, and at Contractor's written request, Ordering Activity will furnish Contractor with a certification signed by an officer of Ordering Activity verifying that the Programs are being used pursuant to the terms of this Agreement and any applicable Order. Upon at least thirty (30) days prior written notice, Contractor may audit Ordering Activity's use of the Programs to ensure that Ordering Activity is in compliance with the terms of this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at Ordering Activity's facilities and will not unreasonably interfere with Ordering Activity's business activities. Ordering Activity will provide Contractor with access to the relevant Ordering Activity records and facilities. If an audit reveals that Ordering Activity has underpaid license fees to Kony during the period audited, then Ordering Activity and Contractor will work diligently to true-up the account.

7. **Ownership.** The Programs are licensed to Ordering Activity subject to the terms of this Agreement. Contractor reserves all rights not expressly granted to Ordering Activity. Contractor retains ownership of all copies of the Programs. Ordering Activity acknowledges that the Programs contain and embed valuable, unpublished information that is proprietary and confidential to Contractor and its suppliers; Ordering Activity agrees to keep all such information confidential.

8. **Reserved:**

9. **Confidentiality.**

9.1 **Definition.** By virtue of this Agreement, the parties may have access to each other's Confidential Information. "Confidential Information," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. Contractor Confidential Information includes, without limitation, the nonpublic aspects of the Programs and any software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Programs. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party's employees and advisors, that have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.

9.2 **Exclusions.** Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure without restriction on use or disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on use or disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.3 **Use and Nondisclosure.** Neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of

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this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency or court, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the disclosure.

10. **Warranty and Disclaimer.**

10.1 **Limited Warranty.** Contractor warrants to Ordering Activity that for a period of ninety (90) days from the date of delivery ("Performance Warranty Period"), the Programs, when used as permitted hereunder and in accordance with its documentation, will operate substantially as described in the documentation. If during the Performance Warranty Period, Ordering Activity notifies Contractor of a non-conformity in breach of the foregoing warranty through the applicable technical support Programs in writing, Contractor will, use commercially reasonable efforts to correct the non-conformity or provide a work-around within a reasonable period of time, or, if Contractor determines that it is unable to do so, Contractor will refund to Ordering Activity, any license fees paid for the non-conforming Program prorated from the date the non-conformity was reported to the end of the annual license term. In the event of a refund remedy, Ordering Activity's license to use the affected Program will be terminated. This provision states Contractor's entire liability and Ordering Activity's sole remedy for any non-conformity in a Program.

10.2 **Disclaimer.** Ordering Activity assumes sole responsibility and liability for results obtained from the use of the Programs and Ordering Activity Applications and for conclusions drawn from such use. Ordering Activity acknowledges and agrees that Contractor makes no guarantee that the Programs or the use thereof by Ordering Activity or its users will satisfy Ordering Activity's obligation to comply with industry standards or legal or other regulatory requirements, including without limitation those pertaining to data privacy and security or internal controls. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE PROGRAMS OR SERVICES. WITHOUT LIMITING THE FOREGOING, KONY DISCLAIMS ANY WARRANTY THAT THE PROGRAMS WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. CONTRACTOR FURTHER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PROGRAMS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Infringement Indemnification.**

11.1 **By Contractor.** Subject to the limitations set forth below, and within the parameters of federal regulations, Contractor shall indemnify and defend Ordering Activity against any damages awarded against Ordering Activity in, or payable by Ordering Activity in settlement of, any suit or action brought against Ordering Activity to the extent that it is based upon a claim that the Programs, provided by Contractor hereunder, infringe or misappropriates the intellectual property rights of any third party. Contractor shall at Contractor's expense, defend any such claim for which indemnity is sought. Ordering Activity shall provide reasonable cooperation to Contractor in Contractor's defense of any such claim. Contractor's obligations under this Section are contingent upon: (a) Ordering Activity providing Contractor with prompt written notice of such claim; (b) Ordering Activity granting to Contractor sole authority and control over the defense and settlement of such claim, provided that Contractor shall not agree to any settlement unless Ordering Activity has expressly approved of the settlement in advance, which consent will not be unreasonably withheld, conditioned or delayed; and (c) Ordering Activity keeping Contractor informed of all material developments related to such claim and (where applicable) providing reasonable cooperation to Contractor, at Contractor's expense, in Contractor's defense and settlement of such claim. In the event that Contractor's right to provide the license, or the use of the Programs, is enjoined or in Contractor's reasonable opinion is likely to be enjoined, Contractor may elect to obtain the necessary rights, or replace or modify the relevant portions thereof, so that they become non-infringing, or, if the foregoing cannot be achieved on a commercially reasonable basis, terminate this Agreement without liability to Ordering Activity and provide Ordering Activity a pro-rated refund of any pre-paid fees. EXCLUDING THE COST OF DEFENSE, THE FOREGOING STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE PROGRAMS.

Contractor shall have no liability or obligation under this Section 11.1 to the extent that any third-party claims described herein are based on (a) use of the Programs in a manner that violates this Agreement; (b) any combination of the Programs with any software, programs, product, service, component, method, and/or other element that is not supplied by Contractor, to the extent the claim would have been avoided but for such combination; (c) any modification to the Programs is made by any person other than Contractor; (d) Contractor's compliance with particular specifications, instructions, or requirements furnished by Ordering Activity; or (e) any claim for which Ordering Activity is responsible.

11.2 **Reserved.**

12. **Reserved**

13. **General.**

13.1 **Reserved.**

13.2 **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.3 **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. The parties agree that neither party shall be deemed the drafter of this

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Agreement and, in the event any provision in this Agreement is alleged to be ambiguous, such provision will not be construed in favor of one party on the ground that the provision was drafted by the other party.

13.4 Reserved.

13.5 U.S. Government End Users. The Programs and documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Programs and documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Programs and documentation will be only those specified in this Agreement.

13.6 Assignment/Successors. The parties may not assign or transfer this Agreement, in whole or in part, without the other Party's prior written consent. Any attempted assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to its successor as part of a corporate reorganization, consolidation, merger or sale of substantially all assets of such party, provided the assignee assumes all obligations in this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

13.7 Non-Exclusive Remedies. Except as set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise, subject to the limitations set forth in this Agreement.

13.8 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.9 Reserved.

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

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

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- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
11. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
Litera Corporation

Litera Corporation LICENSE, WARRANTY AND SUPPORT TERMS

LITERA CORP. END USER LICENSE AGREEMENT

This End User License Agreement (the "Agreement") is a binding agreement between the GSA Customer ("You" or "User") and Litera® Corp. ("Litera"), a corporation organized and existing under the laws of the state of New Jersey, USA and with a principal place of business at 5000 Crossmill Road, McLeansville, North Carolina, 27301, USA regarding the use of Litera's software (the "Software") and any accompanying documentation (the "Documentation"). You agree to be bound by the terms of this Agreement. If you do not agree, you are not licensed to use the Software, and you must return any copies of the Software in your possession or control to Litera.

1. GRANT OF RIGHTS

Litera grants User a non-exclusive, non-transferable, limited License to access and use the Software solely for User's use, which is restricted to installing the Software and executing the Software's functions. Such license will be effective only for the term stated in the applicable GSA Customer Purchase Order. As such, if User has purchased a perpetual License, the Software is licensed in perpetuity. If User has purchased an annual License, it will expire on the anniversary date of the purchase unless a subsequent annual License or a perpetual License is purchased.

A License may not be transferred to another party or entity without prior written approval from Litera.

2. SOFTWARE LICENSE

The license permits User to make that number of copies of the Software as the purchased License permits for use at the licensed site as stated in the applicable GSA Customer Purchase Order. A "site" means all personal computers, servers or minicomputers (including networked systems) with the same operating system platform at a single location or at different locations that are connected by a single networked system (i.e., any combination of two or more terminals that are electronically linked and capable of sharing the use of a single software product). In addition, User's employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) who work at or are assigned to the licensed site may use the Software on personal computers located off-site. Each copy made by User must include the copyright/proprietary rights notice(s) embedded in and affixed to the Software. All other copying is prohibited.

User may not loan, lease, distribute or transfer the Software or copies to third parties, nor reverse engineer or otherwise attempt to discern the source code of the Software. Further, User may not reproduce all or any portion of the Software or the Documentation (except as expressly permitted in this Agreement). User agrees to notify its personnel who may have access to the Software of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

Title to the Software is not transferred to User. Ownership of all copies of the Software and of copies made by User is vested in Litera, subject to the rights of use granted to User in this Agreement.

3. SUPPORT

If User has acquired and paid for (i) an annual license for the Software (which includes support for the term of the annual license) or (ii) a perpetual license for the Software and the first year of Litera Software Assurance (LSA), a software support and upgrade subscription, then User is entitled to support services as follows:

- (a) Duration** - For one (1) year commencing on the Effective Date of the license term, and for subsequent one (1) year periods commencing on the anniversary dates of the Effective Date, to the extent User has executed a new or modified GSA Customer Purchase Order for such subsequent one-year period prior to the commencement of the period (each such one-year period, hereinafter referred to as a "Subscription Period").
- (b) Services Provided** - Technical support for the Software consisting of telephone, fax and email information and advice, and any updates of the Software generally made available by Litera to its subscribing licensees of the Software during the Subscription Period (collectively, "Software Support"). Such Software Support will be the obligation of Litera and will be provided by Litera or its designee(s).
- (c) Requests for Software Support** - Requests for such technical support should be submitted by User via telephone, fax or e-mail to Litera.

4. PROPRIETARY MATERIALS AND INTELLECTUAL PROPERTY

The Software itself, and material accessible to you through the Software, is the subject of intellectual property rights belonging to Litera and/or its licensors, including, without limitation, patents, copyrights, trademarks, and/or trade secrets. Except as expressly permitted by Litera, you may not reproduce, redistribute, retransmit, publish or otherwise transfer, or commercially exploit any such material.

5. CONFIDENTIALITY

User and Litera acknowledge that they may, in the course of performing their respective obligations or exercising their respective rights under this Agreement, be exposed to or acquire information that is proprietary to or confidential to the other Party or to third parties to whom such other Party has a duty of confidentiality. "Confidential Information" shall be deemed to include any and all non-public information of any form obtained or learned by each Party in connection with this Agreement (but not this Agreement itself) including, but not limited to, any information regarding either Party's business practices, policies, and strategies, technology systems and platforms, source code, all information regarding either Party's clients, and specifically including all intellectual property of Litera listed in Section 4 herein. When the end user is an agency or instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

User and Litera agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than as contemplated by this Agreement. In the event that such Confidential Information is required to be disclosed by applicable federal law or regulation, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent

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jurisdiction, each Party will provide prompt written notice to the other Party of such requirement such that the other Party may seek a protective order or other appropriate remedy.

6. CHARGES AND PAYMENT

You are responsible for the payment of all fees in accordance with the FAR, the underlying GSA Schedule Contract and any applicable GSA Customer Purchase Order.

7. LIMITED WARRANTY

User acknowledges and understands that the Software and related Documentation may contain errors and omissions. Except as set forth herein, the Software and the related Documentation are provided "AS IS," and User assumes all risks of the Software's use, quality and performance. Litera agrees to use its best commercial efforts to correct errors with the Software, but shall have no responsibilities to User other than to correct any such defects or problems in the Software or the related Documentation, and to assure that the Software operates as designed.

LITERA DISCLAIMS ANY AND ALL WARRANTIES WITH REGARD TO THE SOFTWARE AND THE RELATED DOCUMENTATION, WHETHER EXPRESS OR IMPLIED, INCLUDING SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The performance of the Software varies with various manufacturers' equipment with which it is used.

Litera does not warrant the level of performance of the Software. Litera does not warrant that the Software or the functions contained in the Software will meet User's requirements, operate without interruption or be error-free.

8. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable federal law, the following shall apply:

User's exclusive remedy for breach by Litera of its limited warranty shall be replacement of any defective medium upon its return to Litera within the warranty period or, if Litera is unable to provide a replacement that is free of defect, a prorated refund of the license fee paid by User with respect to such medium.

IN NO EVENT SHALL LITERA BE LIABLE TO USER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF LITERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY LITERA'S NEGLIGENCE; (2) FOR FRAUD; (3) FOR EXPRESS REMEDIES UNDER LAW OR THE CONTRACT; OR (4) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. TERMINATION

When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Litera shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon any termination of this Agreement, User must cease all use of the Software, destroy all copies then in its possession or control and take such other actions as Litera may reasonably request to ensure that no copies of the Software remain in its possession or control.

10. U.S. Government Users.

This Section 10 applies to all acquisitions of the Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of the acquisition regulation(s) applicable to this procurement and FAR 52.227-14 "Rights in Data" (Dec. 2007) applies. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of the Software. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Software, unused. DFARS 252.7015 "Technical Data-Commercial Items"(Jun. 2013) applies only to acquisitions by the Department of Defense.

11. GENERAL

This Agreement, the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders embody the entire agreement between User and Litera with respect to the Software and supersede all prior understandings or agreements, oral or written, relating to the Software. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order.

Failure by Litera to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right.

In the event that any portion of this Agreement is held unenforceable, the remainder of the provisions shall remain in full force and effect.

Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by User. Assignment by Litera is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013).

Failure of a party to enforce any provision of this Agreement does not constitute and should not be construed as a waiver of such provision or of the right to enforce such provision.

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

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

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- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

LOOKINGGLASS CYBER SOLUTIONS, INC.

LOOKINGGLASS CYBER SOLUTIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **DEFINITIONS.** Certain capitalized terms, if not otherwise defined on herein shall have the meanings set forth below in this Section 1.

1.1. **"Appliance"** shall mean, collectively, the Computer Equipment, the Licensed Software, and any third party software and any patches, updates, improvements, additions and other modifications or revised versions that may be provided by Lookingglass from time to time ordered and paid for by Ordering Activity pursuant to an Order Form.

1.2. **"Computer Equipment"** means Lookingglass' network information management hardware equipment, including the various hardware components that comprise such equipment.

1.3. **"Confidential Information"** means any material or information relating to a Party's research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Lookingglass shall constitute Confidential Information of Lookingglass.

1.4. **"Customer Content"** means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity that is uploaded, stored, analyzed and made available to and through the Licensed Software.

1.5. **"Data"** shall mean Lookingglass' commercially available proprietary analysis and information and third party information regarding the characteristics of certain security threats and vulnerabilities, data and analysis of malicious software and executables that is periodically provided to Lookingglass customers and the Ordering Activity through a Data Service Subscription pursuant to the terms of this Attachment A.

1.6. **"Data Service Subscription"** shall mean Lookingglass' service that Lookingglass customers may purchase through an Order Form, whereby the Data is delivered to the Appliance(s) at Ordering Activity's site for use by Ordering Activity.

1.7. **"Documentation"** shall mean Lookingglass' standard user manuals and/or related documentation generally made available to Ordering Activities of the Licensed Software.

1.8. **"Effective Date"** shall have the meaning set forth in Order Form placed with Contractor.

1.9. **"Initial Term"** shall have the meaning given such term in Section 8.1.

1.10. **"Installation Services"** shall have the meaning given such term in Section 6.2.

1.11. **"Intellectual Property Rights"** shall have the meaning given such term in Section 4.

1.12. **"Licensed Products"** shall mean, collectively, the Licensed Software, Data and the Documentation.

1.13. **"Licensed Software"** shall mean, collectively, the executable, object code version(s) of Lookingglass' proprietary software, procedures, rules or routines, including Upgrades and updates that are furnished or developed under this Attachment A or the Maintenance Services, excluding any third party applications, that is included on an Appliance.

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1.14. **"Maintenance and Support Services"** shall mean the services described in Section 6.1 and Exhibit B.

1.15. **"Professional Services"** shall have the meaning given such term in Section 6.3.

1.16. **"Term"** means the period during which the Order Form remains in force and effect in accordance with Section 8.1.

1.17. **"Training Services"** shall have the meaning given such term in Section 6.4.

1.18. **"Updates"** means a new issuance of any Licensed Software that provides: (i) minor improvements to existing features; and/or (ii) minor additions in functionality compared to the previous issuance; and/or (iii) bug fixes, corrections, patches, or work-arounds. An Update shall be identified by the numeral change to the right of the first decimal point (e.g. a change from version 1.5 to 1.6 or from 1.4.1 to 1.4.2).

1.19. **"Warranty Period"** shall have the meaning given such term in Section 7.1.

2. PURCHASE OF APPLIANCE.

2.1. **Purchase of Appliance.** During the Term, Ordering Activity may purchase, and Contractor agrees to sell, the Appliance pursuant to one or more standard Order Forms, provided, however, that Ordering Activity's rights in, and the use of, any Licensed Software, installed on such Appliance, shall be governed by the license grant and restrictions contained in Section 3.

2.2. **Order Forms.** During the Term, Ordering Activity may order the Appliance, Data Service Subscription and/or the Maintenance and Support Services by submitting an executed Order Form.

3. SOFTWARE & DATA LICENSE.

3.1. **Software License.** Subject to the terms and conditions of this Attachment A, Contractor hereby grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicenseable, perpetual license ("Lookingglass License") to use the Licensed Products for Ordering Activity's internal use. Ordering Activity may use the Licensed Software embedded on an Appliance only with the Appliance for which the Licensed Software is provided and registered for use. If any Licensed Software is provided on separate media, Ordering Activity may (i) only use it in accordance with the terms set forth in this Attachment A and (ii) make a reasonable number of copies solely for internal backup purposes.

3.2. **Data License.** During the Term and subject to the terms and conditions of this Attachment A, Ordering Activity may purchase a Data Service Subscription from Contractor for use with the Appliance. Upon payment of applicable GSA fees by Ordering Activity, Contractor hereby grants to Ordering Activity a non-transferable, non-sub-licensable, non-exclusive license to download, install and use the Data on the Appliance(s) only for internal Ordering Activity purposes. Ordering Activity may install and use only a single copy of the Data on a single Appliance.

4. OWNERSHIP.

4.1. **Appliances and Licensed Products.** Ordering Activity acknowledges that Lookingglass and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights ("**Intellectual Property Rights**") in and to the Appliances and the Licensed Products (including all components thereof), and Lookingglass expressly reserves all rights not expressly granted to Ordering Activity in this Attachment A. Ordering Activity shall not engage in any act or omission that would impair Lookingglass' and/or its licensors' Intellectual Property Rights in the Licensed Products and any other materials, information, processes or subject matter proprietary to Lookingglass. Raw data shall not be redistributed, republished, or posted for others not a party to this Attachment A to view, use, or otherwise manipulate.

4.2. **Customer Content.** Contractor through Lookingglass acknowledges that, as between the Ordering Activity and Lookingglass, Ordering Activity owns all Intellectual Property Rights in and to the Customer Content. Ordering Activity agrees that Lookingglass may copy, store, process, analyze and display such Customer Content through the Licensed Software and hereby grants to Lookingglass a non-exclusive, non-transferable right and license to use the Customer Content during the Term for the limited purposes of performing Lookingglass' obligations under this Attachment A, solely as authorized hereunder, and to collect and use any such data, in non-user specific and aggregated statistical form, for the development and maintenance of its products and services and for Lookingglass' other business purposes. Ordering Activity hereby represents and warrants that it has sufficient right to grant Lookingglass access to and use of the Customer Content, solely as authorized in accordance with the terms of this Attachment A. Ordering Activity shall be solely responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, consistency integrity, legality, reliability, and appropriateness of all Customer Content. Lookingglass shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Content.

5. GENERAL USAGE RESTRICTIONS.

5.1. **Prohibited Uses.** Ordering Activity will not use the Appliances or the Licensed Products for any purposes beyond the scope of the licenses granted in this Attachment A. Without limiting the generality of the foregoing, Ordering Activity will not: (i) authorize or permit use of the Licensed Products by persons; (ii) distribute any copies of the Licensed Products; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Ordering Activity's rights under the licenses granted in Section 3; (iv) modify or create

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any derivative works of the Licensed Products (or any component thereof), except with the prior written consent of Contractor through Lookingglass; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Products are compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Attachment A shall be construed to grant Ordering Activity any right to obtain or use such source code.

5.2. **Proprietary Notices.** Ordering Activity shall duplicate all proprietary notices and legends of Lookingglass and its suppliers or licensors upon any and all copies of the Appliances and the Licensed Products made by Ordering Activity. Ordering Activity shall not remove, alter or obscure any Lookingglass proprietary notice or legend.

6. MAINTENANCE AND SUPPORT; OTHER SERVICES.

6.1. **Maintenance and Support Terms and Conditions.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' Maintenance and Support Services by paying Contractor the then-applicable annual maintenance and support GSA fee. The terms and conditions that govern the Maintenance and Support Services as provided by Contractor through Lookingglass are attached hereto as Exhibit B. Any Updates provided to Ordering Activity pursuant to the Maintenance and Support Services shall be deemed part of the Licensed Software and shall be licensed under the terms and conditions of the grant of License in Section 3 above.

6.2. **Installation Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' installation services, either on-site or remotely, for the Appliance ("**Installation Services**").

6.3. **Professional Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' professional services under which support shall be provided to Ordering Activity by Contractor through Lookingglass ("**Professional Services**").

6.4. **Training Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' training services ("**Training Services**"), under which a representative of Lookingglass shall be present at Ordering Activity's designated location to provide training services on the operation of the Appliance(s) to the Ordering Activity.

7. WARRANTIES AND LIMITATIONS.

7.1. **Limited Lookingglass Warranties.** Contractor hereby warrants, for the benefit of Ordering Activity only, that the unmodified Appliances and Licensed Software will conform in all material respects to the specifications within the Documentation for a period of ninety (90) days after the delivery date ("**Warranty Period**"), provided that such warranty will not apply to failures to conform to the specifications to the extent such failures arise, in whole or in part, from: (i) any use of the Appliances or the Licensed Software other than in accordance with the Documentation; (ii) modification of the Appliances or the Licensed Software by Ordering Activity or any third party; or (iii) any combination of the Appliances and the Licensed Softwares with software, hardware or other technology not provided by Contractor through Lookingglass under this Attachment A. Contractor further warrants that the media on which the Licensed Products are delivered to Ordering Activity will be free of material defects for Warranty Period. During the Warranty Period, Contractor will replace the Appliances, Licensed Software, and media, free of charge to Ordering Activity, provided Ordering Activity promptly notifies Contractor of such defect and returns the Products to Contractor.

7.2. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT DATA AND INFORMATION PROVIDED MAY BE UNEVALUATED AND UNVERIFIED, AND SHALL NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THEY MUST USE ITS OWN JUDGMENT IN ASSESSING THE NATURE AND ACCURACY OF THE DATA AND INFORMATION PROVIDED.

7.3. **No Other Warranties.** EXCEPT AS EXPRESSLY WARRANTED IN SECTION 7.1 OF THIS ATTACHMENT A, THE APPLIANCES AND THE LICENSED PRODUCTS, AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY CONTRACTOR ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. ORDERING ACTIVITY IS RESPONSIBLE FOR IMPLEMENTING APPROPRIATE PROCEDURES TO MAKE ONSITE BACK-UP COPIES OF ORDERING ACTIVITY'S PROGRAM FILES AND DATA FILES TO MINIMIZE ANY DAMAGE THAT MIGHT ARISE FROM AN ERROR OR DEFECT IN THE APPLIANCES OR THE LICENSED PRODUCTS. NO WARRANTY IS MADE BY CONTRACTOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE APPLIANCES OR THE LICENSED PRODUCTS OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS ATTACHMENT A WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. ORDERING ACTIVITY ACKNOWLEDGES THAT CONTRACTOR'S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR THE BENEFIT OF ORDERING ACTIVITY ONLY.

8. MISCELLANEOUS.

8.1. **U.S. Government End-Users.** Each of the components that constitute the Licensed Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are

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used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth herein.

EXHIBIT B

MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

1. Definitions.

- a. **“Error”** means any reproducible failure of the Software to perform any material function set forth in the accompanying documentation.
- b. **“New Release”** means a new release of the Software issued by Lookingglass provided for the purpose of materially enhancing the functionality or performance of the Software. New Release shall be identified by the numeral to the left of the first decimal point (e.g. a change from version 1.1 to 2.0).
- c. **“Maintenance Release ”** means a bug fix or minor enhancement to the Software, which is identified by the numeral to the right of the first decimal point in the Software (e.g., a change from version 1.1 to 1.2).
- d. **“Maintenance and Support Services”** means that (a) Contractor through Lookingglass shall provide Ordering Activity with all Maintenance Releases released during the term for which Maintenance and Support Services fees have been paid; (b) Contractor through Lookingglass shall answer questions from Ordering Activity regarding the operation of the Software via telephone and e mail, according to the escalation procedures set forth below; and (c) Contractor through Lookingglass shall use commercially reasonable efforts to correct any Errors in the Software reported by Ordering Activity and confirmed by Lookingglass in accordance with the priority level assigned to the Error by Lookingglass, as described in the escalation procedures set forth below.

2. Ordering Activity Obligations.

- a. Ordering Activity shall furnish descriptions and machine readable examples of Errors in the form requested by Lookingglass technical support personnel. Ordering Activity shall also assist Lookingglass' efforts to duplicate any Errors or problems reported by Ordering Activity.
- b. Contractor through Lookingglass reserves the right to limit the number of individuals who are authorized to make requests for Maintenance and Support Services, and requests Ordering Activity to designate two (2) initial primary contacts. Such technical support contacts must be knowledgeable in the use of the Software and the Ordering Activity's operating environment. Ordering Activity agrees to notify Lookingglass of any changes in primary support contacts within a reasonable time period.

3. Help Desk; Escalation Procedures.

- a. Contractor through Lookingglass shall provide the following support: answering of telephone calls placed to the customer support telephone number 888-SCOUT93 (726-8893), and e-mail support at support@lgscout.com. Lookingglass shall use commercially reasonable efforts to provide such support from 9 a.m. to 5 p.m. in each Continental United States Time Zone, excluding Alaska, Monday through Friday excluding U.S. holidays. Errors may be reported any time.
- b. Contractor through Lookingglass shall respond to Errors in accordance with the priority level indicated in the chart below, which priority level shall be determined by Lookingglass.

Priority	Definition	Target Response for Initial Requests*	Actions
Priority 1	Error that renders the Software inoperative or causes the Software to fail catastrophically	Within 4 business hours	Lookingglass shall promptly initiate the following procedures upon confirmation of the Error by Lookingglass: (1) assign a senior technical support manager to correct the Error; (2) notify senior Lookingglass management that a Priority 1 defect has been reported and that steps are being taken to correct the defect; (3) provide Ordering Activity with periodic reports on the status of the resolution; (4) commence work to provide Ordering Activity with a workaround or fix.
Priority 2	Error that materially restricts Ordering Activity's use of the Software	Within 1 business day	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.

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Priority 3	Error that causes only a minor impact on Ordering Activity's use of the Software and/or a defect for which a workaround is available.	Within 2 business days	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.
Priority 4	A cosmetic or documentation Error that does not impact use of the Software	Within 2 business days	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.

* Target response time for support requests by e-mail or other on-line facility is within one (1) business day.

- c. The response times set forth in the chart above are target response times only. Lookingglass' sole obligation is to use commercially reasonable efforts to respond to Errors within such time frames, not to have resolved them.

4. Exclusions and Limitations. Lookingglass shall have no obligation to support:

- a. Altered, damaged or modified Software;
- b. Software that is not the current release or the most recent previous release;
- c. Errors or other software problems caused by Ordering Activity's negligence, changes made by any party other than Lookingglass, hardware malfunction, and/or other causes beyond the reasonable control of Lookingglass;
- d. Software installed in an operating or hardware environment not supported by Lookingglass.

- 5. **Maintenance Releases.** Contractor through Lookingglass' obligations to provide Maintenance Releases shall only require Lookingglass to supply such releases as soon as reasonably possible after such releases become generally available. This Maintenance and Support Services Exhibit shall not be construed to obligate Lookingglass to provide Maintenance Releases to Ordering Activity on any specific timetable.

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

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

- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

PROPRIETARY AND CONFIDENTIAL

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

MAGNET FORENSICS

MAGNET FORENSICS LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions

- 1.1. "Agreement" means this Magnet Forensics Attachment A and the applicable ordering document.
- 1.2. "Feedback" has the meaning set out in Section 2.12.
- 1.3. "Magnet Forensics", "we", and "us" have the meaning set out in Section 12.1.
- 1.4. "Software" means all components of this software, user documentation, printed materials, and "online" or electronic documentation and any copies thereof, in whole or in part, provided to you by Magnet Forensics. Software shall include Magnet IEF, Magnet Axion and the software embedded on a dongle, USB thumb drive, or other media that is a license key to validate authorized use of the Software by a User.
- 1.5. "Third Party Files" has the meaning set out in Section 2.13.
- 1.6. "User" means a single individual user of the Software in whole or in part (including any functionality within the Software) with his/her own license key to validate authorized use of the Software and who uses the Software in the regular course of his/her business or for personal use, in accordance with the Software user documentation, and not for the purposes of development for commercial resale or further distribution of the Software, including without limitation by resale or sublicensing, or for the purposes of providing services to third parties using the Software.
- 1.7. "You", "you", and "your" means: (i) the Ordering Activity using the Software.

2. License Grant

2.1. Magnet Forensics hereby grants to you a personal, non-exclusive, non-transferable license to use the Software on the computer(s) used by a single individual, solely as a User for the purposes and in accordance with the terms set forth in this Agreement and the user documentation accompanying the Software. If you wish to offer or provide access to or use of the Software, in whole or in part (including any functionality within the Software), to other persons or third parties, such persons or third parties must pay the applicable license fees, if any, to Magnet Forensics or a Magnet Forensics' authorized reseller and agree to this Agreement to be a User. Notwithstanding the foregoing, you may provide access to or use of the "Portable Case" functionality within the Software to other persons or third parties provided: (a) only one instance of the "Portable Case" functionality within the Software is in use at any time by any such other persons or third parties; and (b) such persons or third parties must pay the applicable license fees, if any, to Magnet Forensics or a Magnet Forensics' authorized reseller and agree to this Agreement to be a User. You recognize the importance of Magnet Forensics maintaining its proprietary rights over the Software and of avoiding improper use of the Software as defined by this Agreement. You do not have the right to obtain or use source code of the Software. If you are acquiring the Software on a subscription basis, then the license rights set out in this Section 2.1 apply only for the time period for which you have purchased the requisite subscription.

- 2.2. Reserved.
- 2.3. You shall not and shall ensure that Users shall not:
- (a) copy, reproduce, or modify the Software or any part thereof including the software that is provided as a license key to validate authorized use of the Software by a User;
 - (b) enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof including the software that is provided as a license key to validate authorized use of the Software by a User;
 - (c) distribute, lend, assign, license, sublicense, lease, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party on a temporary or permanent basis;
 - (d) remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software (including without limitation any copyright notice);
 - (e) copy any written materials accompanying any portion of the Software unless specifically authorized in writing to do so by Magnet Forensics;
 - (f) use the Software to provide services to third parties (including technical or training services), or otherwise publicly display or market the Software, for the purposes of your commercial gain (which includes any monetary consideration or other compensation);
 - (g) use the Software in any unlawful manner; or
 - (h) authorize, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in (a) – (g) above, or attempting to do so. For the purposes of this provision "copy" or "reproduce" shall: (i) not include: (A) making additional copies of the Software for your own use, as long as only one copy may be used at any one time and used in accordance with and for the purposes described in the user documentation; or (B) making one back-up copy of the software licensed hereunder, provided that such copy is not used simultaneously or concurrently with the original software; and (ii) include, without limitation, preinstalling the Software or any part thereof on any computers used by other persons or third parties.

PROPRIETARY AND CONFIDENTIAL

- 2.4. You acknowledge that use of the Software may result in your collection of information obtained from third parties, that such third party information is not under the control of Magnet Forensics, and Magnet Forensics is not responsible or in any way liable for the performance and nonperformance of the Software to collect such third party information, including without limitation the accuracy, completeness, interpretation, reliability, copyright compliance, legality, decency, or any other aspect of such third party information. It is solely your responsibility to evaluate the accuracy, completeness, interpretation, and usefulness of the collection of any such third party information. Magnet Forensics has no special relationship with or fiduciary duty to you, and you acknowledge that Magnet Forensics has no control over, and no duty to take any action regarding any of your acts or omissions, including without limitation: (a) what information and material you access through the Software; (b) how you may interpret or use the information and materials accessed through the Software; or (c) what actions you may take as a result of having been exposed to information and materials obtained through the Software.
- 2.5. You specifically acknowledge that the Software is not developed, or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous, timesensitive or mission critical applications. You agree that Magnet Forensics shall not be liable for any claims or damages arising from such use if you use the Software for such applications.
- 2.6. By entering into this Agreement with Magnet Forensics, you are representing and warranting that you have the legal right to obtain the Software from Magnet Forensics and to use it in the jurisdiction in which you are located, and that your payment for and use of the Software does and will not cause Magnet Forensics to be in breach of any applicable laws or regulations.
- 2.7. You must ensure that all your employees and contractors that use the Software comply with the terms and conditions of this Agreement to be a User.
- 2.8. Magnet Forensics may impose certain restrictions on your use of the Software, such as restrictions on site, equipment and usage (including usage of features of the Software), by providing you with such restrictions in writing at the time the Software is provided.
- 2.9 All upgrades and updates to the Software that are provided to you by Magnet Forensics pursuant to a separate support and maintenance agreement shall also be considered Software hereunder, subject to all terms, conditions and restrictions contained herein.
- 2.10 In order to use the Software, you:
- (a) must provide and maintain with Magnet Forensics up-to-date, complete and accurate registration information, including your first and last name, your valid mailing address, your phone number and your valid email address;
 - (b) consent that the personal data will be collected, used, disclosed, and processed in accordance with Magnet Forensics' Privacy Policy and, if you are using the Software on behalf of a company or other entity, you represent, warrant and undertake that you have obtained all requisite consents from the relevant individuals prior to the transfer of any personal data to Magnet Forensics; and
 - (c) must be at all times in compliance with the terms and conditions of this Agreement and applicable law.

Magnet Forensics reserves the right to change, suspend, end-of-life or otherwise discontinue any version of the Software at any time, including the availability of any feature or content, or any promotion offered by Magnet Forensics.

2.11. Magnet Forensics welcomes your feedback regarding the Software, but we cannot receive feedback unless we are able to freely use the feedback to improve the Software. Therefore, unless we otherwise agree with you in writing, you hereby agree that: (a) we own all feedback, comments, suggestions for improvement, ideas, concepts and changes that you provide to us or identify in the course of your use of the Software, and all associated intellectual property rights (collectively the "Feedback"); and (b) you hereby assign to us all of your right, title and interest in your Feedback. You will not knowingly provide us any Feedback that is subject to third party intellectual property rights. You agree to cooperate fully with us with respect to signing further documents and doing such other acts as are reasonably requested by us to confirm that we own the Feedback and to enable us to register and/or protect any associated intellectual property rights and/or confidential information.

2.12. You and/or a third party may define the structure of artifacts in a XML file ("Third Party Files") that the Software scans subject to the terms of this Agreement. Your use of any Third Party File is at your risk. Third Party Files may contain malicious code or viruses. We recommend you trust the source of Third Party Files and scan them for viruses.

3. Reserved.

4. Support

4.1. This license does not imply any rights to future upgrades or updates of the Software. However, if Magnet Forensics does provide you with any upgrades or updates to the Software, such upgrades or updates shall be subject to the terms and conditions of this Agreement. For greater certainty, you must specifically purchase support from Magnet Forensics in order to obtain upgrades or updates to the Software or any support for the Software (telephonic or otherwise) beyond Magnet Forensics' warranty obligations set forth herein, and all such support shall be subject to Magnet Forensics' Support Terms and Conditions contained herein. If You contact Magnet Forensics for support or opt-in to send diagnostics or other technical information to Magnet Forensics through email or tools provided by Magnet Forensics for such purposes, You agree that: (a) the information the disclosing party discloses to the receiving party may be confidential information that the receiving party agrees to keep in strict confidence; and (b) Magnet Forensics may collect technical information like Software version number, Software usage information, operating system and environment information, and list of installed applications that may be helpful for the diagnostics purposes. Such information will be used for the purposes of support, software updates, and improvement of the Software in accordance with Magnet Forensics' Privacy Policy.

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Subject to your security and privacy policies, You acknowledge and agree that calls and emails with Magnet Forensics and its service providers may be recorded or logged for training, quality assurance, customer service and reference purposes.

4.2. Magnet Forensics shall not be responsible for the installation or integration of the Software with any hardware or software whatsoever, whether belonging to you or any third party. In no event shall Magnet Forensics be obligated to customize or otherwise modify the Software to meet your requirements or those of any third party.

5. Intellectual Property Rights and Confidentiality

5.1. You are responsible for complying with all applicable intellectual property laws in your use of the Software.

5.2. You acknowledge that the Software, excluding third party licensed software embedded in the Software, is owned by Magnet Forensics, who retains all right, title and interest therein, and is protected by Canadian, U.S. and international copyright laws. In addition, other intellectual property laws (including patent laws) and treaties may protect the Software. It is therefore your responsibility to fully comply with such laws in using and handling the Software. Nothing herein shall be construed as constituting a sale of the Software or any portion thereof to you.

5.3. You do not acquire any intellectual property or other proprietary rights under this Agreement, including without limitation any right, title or interest in and to patents, copyrights, trade-marks, industrial designs, confidential information, or trade secrets, whether registered or unregistered, relating to the Software or any part thereof. Your only rights to the Software and any part thereof shall be those rights expressly licensed or granted to you under this Agreement. Any rights not expressly granted under this Agreement are reserved.

5.4. You acknowledge and agree that the Software: (a) was developed at considerable time and expense by Magnet Forensics and/or its affiliates; and (b) contains confidential information including the trade-secrets of Magnet Forensics and/or its affiliates. Without limiting the foregoing, confidential information includes the 'look and feel', performance, specifications, features and functionality of software, which information may not be discussed or shown to the public by you or your Users in any manner until publicly released by Magnet Forensics.

6. Warranties

6.1. Magnet Forensics warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SOFTWARE IS PROVIDED TO YOU "AS IS", WITHOUT ANY WARRANTY WHATSOEVER. Where the media on which the Software is provided is defective, or you are unable to download the Software in accordance with directions provided by Magnet Forensics, and you notify Magnet Forensics of such issues within ten (10) days of the delivery of the Software to you, Magnet Forensics will provide you with another copy of the Software at no charge to you.

6.2. THE WARRANTY SET FORTH IN THIS SECTION 6 IS THE EXCLUSIVE WARRANTY MADE BY MAGNET FORENSICS TO YOU, AND IS YOUR SOLE AND EXCLUSIVE REMEDY RESPECTING ANY DEFECTS, NON-CONFORMITIES OR PROBLEMS WITH THE SOFTWARE. MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE SOFTWARE PROVIDED HEREUNDER. MAGNET FORENSICS SPECIFICALLY DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. MAGNET FORENSICS DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM BUGS, ERRORS, OR LIMITATIONS. The allocations of liability in this Section 6.2 represent the agreed and bargained for understanding of the parties and Magnet Forensics' compensation hereunder reflects such allocations.

1.3. To the limited extent that Magnet Forensics is not able to disclaim any warranty respecting the Software, any implied or imposed warranty respecting the Software shall nevertheless not apply to defects, nonconformities or problems resulting from: (a) improper or inadequate maintenance or installation of the Software; (b) use of the Software in combination with software, interfaces, or other materials that are not supplied or specifically authorized by Magnet Forensics; (c) unauthorized or improper use or modification of the Software, including use that is not contemplated under the terms of this Agreement or the user documentation accompanying the Software; (d) abuse, negligence, accident, or other damage from external sources (e) improper preparation of your facilities for Software installation and use; or (f) unauthorized maintenance or repair of the Software.

7. Reserved.

8. Reserved.

9. Reserved.

10. Reserved.

11. Compliance with Laws/Export

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11.1. In using the Software, you will observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, provincial, state, municipal and local governing bodies.

11.2. You will not use, import, export, or re-export the Software except in compliance with all applicable laws, which shall include refraining from exporting to any person or country that is on any U.S. or Canadian export control list unless you have a valid and applicable permit to do so. You hereby represent that you will not use the Software in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity.

11.3. If the Software is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software will be only as set forth (i) in this Agreement or (ii) as provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive. Contractor or Manufacturer is Magnet Forensics Inc.

12. Reserved.

13. Reserved.

14. Reserved.

15. Reserved.

Support and Maintenance Terms and Conditions

The following section describes the terms and conditions under which you will receive support and maintenance services from Magnet Forensics Inc. ("Magnet Forensics") in relation to software purchased by you from Magnet Forensics and subject to this Magnet Forensics' Attachment A.

1. Definitions

1.1 "Software" means the software licensed to you by Magnet Forensics pursuant to the terms and conditions of the User Agreement.

1.2 "Term" means: (a) the initial thirty (30) day period after your purchase of the Software, and (b) the period for which you have purchased support and/or maintenance services from Magnet Forensics, if any.

1.3 "Updates" means software releases from Magnet Forensics, identified by Magnet Forensics as updates, which supplement a version of Software that you have obtained from Magnet Forensics and that may correct defects, bugs or programming errors in such version of Software or provide minor increases in functionality for such version of Software.

1.4 "Upgrades" means software releases from Magnet Forensics, identified by Magnet Forensics as upgrades, which replace a version of Software that you have obtained from Magnet Forensics with a newer version of such Software.

1.5 "User Agreement" means the user agreement under which Magnet Forensics provided the software to you, either by providing you with the user agreement or by providing you with access to the user agreement.

2. Support and Maintenance Services

2.1 During the Term, subject to the restrictions set forth herein, Magnet Forensics will provide support and/or maintenance services, as agreed upon by the parties on the applicable ordering document.

Support and maintenance services consist of the following:

Support Services:

- a. Advice provided telephonically and by e-mail on the use and maintenance of the Software where such Software is not operating in accordance with its specifications;
- b. Instruction provided telephonically and by e-mail on the use and maintenance of the Software where such instructions are not included in the documentation accompanying the Software; and
- c. Guidance on software failure diagnoses and suggestions for Software error correction provided telephonically and by e-mail; and
- d. Commercially reasonable efforts to correct any defects in the Software which prevent the Software from operating in accordance with its specifications (including the provision of Updates or Upgrades where necessary to correct a defect in the Software which prevents the Software from operating in accordance with its specifications).

Support services may take the form of specific bug fixes, special releases to remedy defects in the Software or, where bugs or defects are not critical (as determined in Magnet Forensics' sole discretion) inclusion of fixes in a future scheduled release of the Software.

a. Maintenance Services:

- a. the provision of Updates to the Software including, without limitation, enhancements to the Software.
- b. where specifically agreed upon by you and Magnet Forensics in your support and maintenance purchase form, the provision of Upgrades to the Software.

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2.2 Magnet Forensics' obligations to perform the support and maintenance services hereunder, as applicable, will apply only to the Software provided to you by Magnet Forensics and not to peripheral data or any third party hardware or software. Support and maintenance services shall be available between 8:30 a.m. to 5:30 p.m., Eastern Time, Monday to Friday, excluding Canadian statutory or national holidays (each a "Business Day").

2.3 The following services (the "Excluded Services") are specifically not included in the support and maintenance services:

- a. advice or instructions related to general usage of the Software;
- b. installation of the Software;
- c. on-site support related to the Software;
- d. corrections of defects found by Magnet Forensics to be:
 - i. in other than a current, unaltered release of the Software provided free of charge to you;
 - ii. caused by your negligence or that of a third party (other than a third party working on Magnet Forensics' behalf), or modifications made to the Software by you or by any third party other than a third party working on Magnet Forensics' behalf;
 - iii. arise from use or interoperability of the Software in combination with hardware or software not specifically approved by Magnet Forensics;
 - iv. caused by normal wear and tear;
 - v. caused by improper or unauthorized use of the Software;
 - vi. caused by use of the Software in a manner contrary to, or otherwise not in accordance with, documentation, guidelines or instructions provided by Magnet Forensics in relation to the Software; vii. due to external causes such as, but not limited to, power failure or electrical power surges; or viii. defects which do not prevent the Software from operating in accordance with its specifications. In the event that you wish Magnet Forensics to perform any Excluded Service, such Excluded Service must be pursuant to a separate, mutually agreed upon written agreement between you and Magnet Forensics.

3. **Reserved**

4. **Reserved**

5. **Intellectual Property Rights**

5.1 You acknowledge and agree that Magnet Forensics shall own all intellectual property rights (whether or not patentable or registrable under copyright, trade-mark or similar legislation or subject to analogous protection) in and to the Software, including any and all enhancements and modifications made to the Software, and all work conceived, created, invented produced, designed or reduced to practice by Magnet Forensics and its personnel as a result of or with respect to any and all services provided to you pursuant to this Agreement (collectively, the "Modifications"); however you shall have a non-exclusive, non-transferable license to use any enhancements and/or modifications made to the Software in the performance of an order, for your own internal purposes, at no additional cost. Your rights and obligations relating to the use of the Software shall be governed by the terms of the User Agreement regardless of whether you, your employees or contractors may have contributed to any Modifications in any way.

6. **Limited Warranty and Limited Liability**

6.1 Limited Warranty. Magnet Forensics warrants that all services provided in accordance with the terms of this Agreement shall be provided in a competent, professional manner by persons who are fully trained and qualified in respect of the Software. Magnet Forensics does not represent or warrant that the services provided hereunder will be capable of achieving a particular result for your business, or that the operation of the Software will be error free or uninterrupted, or that all errors in the Software can be found or corrected, although Magnet Forensics shall use commercially reasonable efforts to do so.

6.2 Limitation of Liability. OTHER THAN AS OTHERWISE PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAGNET FORENSICS MAKES NO WARRANTY OR CONDITION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, MODIFICATIONS, THE SUPPORT SERVICES, THE MAINTENANCE SERVICES OR ANY OTHER SERVICES PROVIDED IN ACCORDANCE WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MAGNET FORENSICS, ITS DISTRIBUTORS, AGENTS, DIRECTORS, OFFICERS, OR EMPLOYEES (COLLECTIVELY, "AGENTS") SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. OTHER THAN AS SPECIFICALLY PROVIDED IN THE USER AGREEMENT, YOU ASSUME THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF THE SOFTWARE AND THE MODIFICATIONS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE.

7. **Reserved**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT A
MESOSPHERE END USER LICENSE AND SUPPORT AGREEMENT**

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1. Definitions.

- a. "Licensed Software" means the proprietary closed-source Mesosphere software components identified in a Licensed Software Order Form, including any software updates, revisions, error corrections, and enhancements to the foregoing which are provided to Ordering Activity by Mesosphere pursuant to the Support Services provided hereunder.
- b. "Open Source Stack" means the Mesosphere open source software and third-party open source software (i) which are listed under the Open Source Stack heading on an applicable Order Form and (ii) for which Mesosphere offers Support Services.
- c. "Node" means a single server (either physical or virtual) that is owned, operated or controlled by Ordering Activity operating the Licensed Software or Open Source Stack (as applicable) whether or not in a Production Environment.
- d. "Production Environment" means any live or production use of the Licensed Software (whether internal or external), including, without limitation, beta tests and limited releases of production applications for testing purposes.
- e. "Support Services" means the Support Level listed in an Order Form, as described in Mesosphere's standard Support and Maintenance Terms attached as Exhibit A.

2. Order Forms. Any purchase order issued by Ordering Activity with regard to the Licensed Software must reference this Agreement.

3. Support & Services. During the Term, Mesosphere will use reasonable commercial efforts to provide the support and maintenance services in accordance with the Support Services indicated on the applicable Order Form for the Open Source Stack and, if applicable, the Licensed Software. If and as indicated on an applicable Order Form, Mesosphere will use reasonable commercial efforts to provide certain services as set forth in as described in such Order Form.

4. Open Source. Ordering Activity acknowledges that the components of the Open Source Stack are, and elements of the Licensed Software may be, provided pursuant to various open source licenses (as may be identified to Ordering Activity by Mesosphere from time to time) (together, "Third Party Software"), and Ordering Activity's use of such components shall be governed solely by (and nothing herein shall limit any of Ordering Activity's rights under) the applicable open source licenses.

5. Grant of License. For each Licensed Software Order Form that has been issued by Ordering Activity, subject to Ordering Activity's compliance with all of the terms and conditions of the Agreement (including, without limitation, any limitations or restrictions set forth on the Licensed Software Order Form, payment of all fees, and any applicable use limitations), Mesosphere grants Ordering Activity a personal, nonsublicensable, nonexclusive right during the Order Form Term to use the Licensed Software in object code form only in accordance with Mesosphere's applicable Documentation. Ordering Activity may only use the Licensed Software to manage the maximum aggregate number of Nodes set forth on the Licensed Software Order Form; provided that Ordering Activity may not use more than one instance of the Licensed Software on any Node.

6. Ownership; Restrictions. Ordering Activity agrees and acknowledges that, as between the parties, Mesosphere and its licensors are the owners of all right, title and interest in and to the Licensed Software, any documentation therefor ("Documentation") and all intellectual property rights therein, and that Ordering Activity shall not obtain or claim any ownership interest in the foregoing. Ordering Activity agrees and acknowledges that the Licensed Software and Documentation contain the valuable trade secrets and proprietary information of Mesosphere and its licensors which have been developed at great expense. Ordering Activity shall not obscure, alter or remove any patent, copyright, trademark or service mark, marking or legend contained on or in any Licensed Software or Documentation. In addition, Ordering Activity will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Licensed Software, (ii) sell, assign, distribute, provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, any Licensed Software (except as expressly and specifically authorized by Mesosphere), (iii) possess or use any Licensed Software, or allow the transfer, transmission, export, or reexport of any Licensed Software or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency, (iv) disclose to any third party any benchmarking or comparative study involving any Licensed Software, or (v) modify, adapt, translate or create derivative works based on any Licensed Software. Prior to disposing of any media or apparatus containing any part of the Licensed Software, Ordering Activity shall completely destroy any Licensed Software contained therein. All the limitations and restrictions on Licensed Software in this Agreement also apply to Documentation. ORDERING ACTIVITY ACKNOWLEDGES THAT THE LICENSED SOFTWARE MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE LICENSE PERIOD.

7. Reserved.

8. Reserved.

9. Reserved.

10. Feedback. Ordering Activity may, though has no obligation to, provide Mesosphere with feedback with respect to Ordering Activity's use of the Licensed Software or Open Source Stack (e.g., feedback related to usability, performance, interactivity, bug reports and test results of the Licensed Software or Open Source Stack) ("Feedback"). If it does, Ordering Activity hereby grants Mesosphere a nonexclusive, worldwide, perpetual, royalty free, fully paid-up license to freely use and make available the Feedback for any purpose.

11. Usage Review; Audit. Mesosphere reserves the right to audit Ordering Activity's use of the Licensed Software and Ordering Activity's compliance with this Agreement, including any Node restrictions or support limitations in an applicable Order Form upon five (5) days' notice, but no more frequently than once every twelve (12) months (and Ordering Activity will provide reasonable information, access, and assistance in connection with any such audit, subject to applicable Government security requirements). In the event that Mesosphere finds that Ordering Activity is not in compliance with Node or other restrictions in an applicable Order Form, or otherwise not using the Licensed Software in accordance with the terms and conditions of this Agreement, then, Mesosphere shall invoice Ordering Activity for any additional fees attributable such use at the applicable GSA list price. Provided it

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does not identify Ordering Activity, Mesosphere will be free to use for development, diagnostic and corrective purposes any data and information it so collects relating to diagnosis, problems, systems, performance, use or functionality, and may allow others to do so.

12. Indemnification. Subject to 28 U.S.C. § 516, Mesosphere shall defend and indemnify Ordering Activity from liability to third parties (including reasonable attorneys' fees) resulting from the Licensed Software infringing any United States patent, copyright or trademark, or misappropriating any trade secret, provided Mesosphere is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement to the extent permitted under 28 U.S.C. 516; Mesosphere will not be responsible for any settlement it does not approve. Mesosphere's obligations under this Section 12 shall not apply with respect to any infringement arising from: (i) Third Party Software or third party open source software; (ii) any method or process in which the Licensed Software may be used; (iii) any compliance with Ordering Activity's designs or specifications; (iv) use of other than the current unaltered release of the Licensed Software; (v) the combination, operation or use of the Licensed Software with the Open Source Stack or any software, data or hardware that is not provided by Mesosphere; (vi) any modifications to the Licensed Software that are not made by Mesosphere; (vii) Ordering Activity continuing allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (viii) Ordering Activity's using such Licensed Software in a manner that is not strictly in accordance herewith. This Section 12 sets forth Mesosphere's liability (and Ordering Activity's remedy) for any claim of infringement or intellectual property rights.

13. Disclaimer. MESOSPHERE warrants that the software product will, for a period of 60 days from the date of your receipt, perform substantially in accordance with the software product's written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, MESOSPHERE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, OPEN SOURCE STACK, SUPPORT SERVICES, AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, MESOSPHERE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY ORDERING ACTIVITY, OR THAT THE OPERATION OF THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL BE UNINTERRUPTED OR ERROR FREE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

14. Limitation of Liability. THE LICENSED SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). USE OF THE LICENSED SOFTWARE IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. THE PARTIES AGREE THAT THIS SECTION 14 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT MESOSPHERE WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

15. Government Use. The Licensed Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101. Any use, modification, derivative, reproduction, release, performance, display, disclosure or distribution of the Licensed Software by any government entity is prohibited, except as expressly permitted by the terms hereunder. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable.

EXHIBIT A MESOSPHERE SUPPORT AND MAINTENANCE TERMS

Definitions

"Business Day" means Monday through Friday (Pacific Time), excluding holidays observed by Mesosphere. "Business Hours" means 9:00 a.m. to 5:00 p.m. (Pacific Time) on Business Days.

"Secondary Support" consists solely of commercially reasonable assistance in error isolation and diagnosis.

"Support Contact" means a single named individual that is authorized to contact Mesosphere to make use of the Support Services.

"Supported Cluster" means clusters running Licensed Software subject to this Agreement.

"Supported Software" means the Licensed Software and the Mesosphere Open Source Stack. "Incident" means a single question or issue posed by a Support Contact using the Support Services.

Scope of Support Services

Support Contact(s) may contact Mesosphere technical support by opening a case via email to request information regarding the use, configuration or operation of the Supported Software running on any Supported Cluster.

The scope of the Support Services provided to Ordering Activity include questions pertaining to:

Operational support for a Supported Cluster running the Supported Software, including:

- Best practices for operating the Supported Cluster.
- Identifying, diagnosing and fixing errors in Supported Software.
- Tools and techniques for monitoring a Supported Cluster.
- Preventing and recovering from failures and troubleshooting.

Problem diagnosis and resolution, including:

- Problem isolation and diagnosis of errors in the Supported Software
- Patches and workarounds to fix bugs in the Supported Software

Support Contacts

Ordering Activity will ensure that its personnel who contact Mesosphere are: (a) knowledgeable about the operation of the Supported Software and the hardware on which the Supported Software is installed; and (b) qualified and trained with respect to the Supported Software. Ordering Activity may designate the number of Support Contacts permitted under its subscription level, to serve as liaison(s) with Mesosphere. Ordering Activity's designated Support Contacts are the sole liaisons between Ordering Activity and Mesosphere for technical support of Supported Software. To avoid interruptions in support services, you must notify Mesosphere whenever technical contact responsibilities are transferred to another individual. Support Channels

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All support requests must be submitted as follows:

- Sending an email to support@mesosphere.io a Support Contact's registered email addresses. Support Services Offerings.

The Support Services which are described below in this Support Services Policy ("Support Levels"), and are subject to the specific terms and conditions set forth therein regarding hours of operation, response times, methods of support and other matters for the Support Level. The Support Services will be provided in accordance with the applicable Support Level that has been selected and purchased by Ordering Activity. Mesosphere shall use commercially reasonable efforts to meet the applicable targeted response times set forth below. Ordering Activity acknowledges that the time required for resolution of issues may vary depending on the specific circumstances of each problem, including, without limitation, the nature of the incident/problem, the extent and accuracy of information available about the incident/problem, and the level of Ordering Activity's cooperation and responsiveness in providing materials, information, access and support reasonably required by Mesosphere to achieve problem resolution. Mesosphere addresses problem resolutions through a number of mechanisms.

Support Level

Premium Level

Times: 24 x 7 x 365

Maximum number of Support Contacts: 4

Emergency Patches: yes

Annual Incidents: unlimited

Severity	Target Response
Level 1	1 Hour
Level 2	4 Hours
Level 3	1 Business Day

For Level 1 Severity Incidents, Ordering Activity and Mesosphere each agree to:

- Assign an incident commander and to communicate that assignment and contact information
- At the request of either party, establish private chat room in which any number of team members from either party may participate in resolving the incident

Standard Level

Times: 9AM–5PM Pacific Time

Maximum number of Support Contacts: 2 Emergency Patches: no Annual Incidents:

- Level 1 & 2: 10
- Levels 3: Unlimited

Severity	Target Response
Level 1	1 Business Day
Level 2	2 Business Days
Level 3	Reasonable efforts

Severity Level Definitions.

Level 1

A Level 1 issue is a major production error within the Supported Software that severely impacts the Ordering Activity's use of the Supported Software for production purposes, such as the loss of production data or where production systems are not functioning and no work-around exists. Mesosphere will use continuous efforts during all hours to provide a resolution for any Level 1 errors as soon as is commercially reasonable.

Level 2

A Level 2 issue is an error within the Supported Software where the Ordering Activity's system is functioning for production purposes but in a reduced capacity, such as a problem that is causing significant impact to portions of the Ordering Activity's business operations and productivity, or where the Supported Software is exposed to potential loss or interruption of service. Mesosphere will use reasonable efforts during its normal hours of operation to provide a resolution for any Level 2 errors.

Level 3

A Level 3 issue is a medium-to-low impact error that involves partial and/or non-critical loss of functionality for production purposes or development purposes, such as a problem that impairs some operations but allows the Ordering Activity's operations to continue to function. Errors for which there is limited or no loss or functionality or impact to the Ordering Activity's operation and for which there is an easy work-around qualify as Level 3. Mesosphere will use reasonable efforts to provide a resolution for any Level 3 error in time for an upcoming release of Supported Software. All inbound email cases shall have an initial status of Level 3.

Ordering Activity Obligations

Ordering Activity must provide a functional Ordering Activity Project/Application description to clearly define the Ordering Activity Project/Application Mesosphere will be supporting. Ordering Activity is responsible for ensuring that its personnel that interact with Mesosphere have sufficient language

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and technical skills, and respond to and cooperate with Mesosphere in a timely manner in connection to requests for Support Services. Using good faith and reasonable judgment, Ordering Activity will assign an initial Severity Level to each report prior to reporting it to Mesosphere, and Mesosphere will assign a unique tracking number to each report as it is reported. Using good faith and reasonable judgment, Mesosphere may change the Severity Level of a report.

As a precondition for requesting Support Services from Mesosphere, Ordering Activity agrees to (and to cause each of its developers to) use reasonable efforts to: (i) attempt to solve the problem and to utilize sufficient resources to clearly understand that a problem exists before consulting Mesosphere; (ii) provide Mesosphere with sufficient information and technical data in order for Mesosphere to establish that a potential problem is not the kind of problem that is an exclusion from the Support Services; (iii) make reasonable attempts and expend reasonable resources to provide any data reasonably requested by Mesosphere to adequately address the potential problem; (iv) utilize sufficient resources to understand the instructions from Mesosphere in addressing the problem, and make reasonable attempts to correct the problem as suggested by Mesosphere. In addition, Ordering Activity agrees and acknowledges that the extent of access and the accuracy of information and technical data provided may affect Mesosphere's ability to provide the Support Services.

Support Service Exclusions.

Mesosphere will have no obligation to provide Support Services to Ordering Activity in the event that (a) following delivery by Mesosphere, the Supported Software has been changed, modified or damaged by Ordering Activity or anyone other than Mesosphere, (b) the problem is caused by Ordering Activity's negligence, misconduct, or misuse of the Supported Software, a hardware malfunction, or other causes beyond the reasonable control of Mesosphere, (c) the problem is due to third party software that is not Supported Software, (d) Ordering Activity has not installed or implemented any Supported Software releases made generally available or is running a Version of the Supported Software that is no longer supported (per the terms below), or (e) Ordering Activity's use of the Supported Software is not in compliance with the Agreement (including without limitation any Node or Ordering Activity Project/Application restrictions). The Support Services do not cover the support of any third party software which integrates with the Supported Software. In addition, the Support Services do not include the following: (i) use of any version of any Supported Software that is not designated as a production release (such as a milestone or release candidate or code contained in the sandbox or any other repository that is not packaged into a production release distribution); (ii) Ordering Activity's failure to comply with operating instructions contained in the documentation (including, without limitation, any failure by Ordering Activity to use up-to-date versions of any third party components or other dependencies as specified by Mesosphere in writing); (iii) installation, configuration, management and operation of Ordering Activity's applications; (iv) APIs, interfaces or data formats other than those included with the Supported Software; (v) custom development services; or (vi) any training.

Version Support.

Mesosphere will provide Support Services for past versions of the Supported Software as follows:

A three-place numbering scheme is used to designate released versions of the Supported Software. The format is R.V.M, where 'R' indicates the Release level, 'V' indicates the Version level, and 'M' indicates the Maintenance Fix level. An example would be version 1.1.3. Often in referring to general Licensed Software versions and releases, the maintenance level is omitted. For example, both 1.1.3 and 1.1.4 may sometimes be referred to as Version 1.1.b. Support Services shall only be provided for the current Version of the Supported Software, as well as the two prior Versions, provided that, except as may be waived by Ordering Activity, each Version will be supported for no less than the shorter of (i) three (3) months from the date the Version is initially released, and (ii) the date that Ordering Activity ceases using such Version in a Production Environment. Support for each Version is supplied via Maintenance Fixes. Ordering Activity Support will direct Ordering Activities to existing fixes/patches and workarounds applicable to the reported case. Ordering Activity Support may direct Ordering Activities to upgrade to a more current Release / Version / Maintenance Fix of the Supported Software.

THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT A IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT.

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

1. **Scope.** This Rider and the attached Microfocus ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.
 - f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
 - g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.
 - h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.
 - i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.
 - j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.
 - k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.
 - l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

- m) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
- n) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
- o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
- p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.
- r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

**MICROFOCUS WARRANTY AND SUPPORT TERMS
Micro Focus Software Inc. Inc. EULA**

The End User License Agreement ("EULA") for each Micro Focus Software Inc. Product is delivered with the Product and is also located at www.MicroFocusSoftwareInc.com/licensing/eula/. Each EULA is created using a standard template so that for different Micro Focus Software Inc. Products the license grant provision of the EULAs may vary but other general provisions remain similar. This Exhibit A shows the standard Micro Focus Software Inc. template for a EULA.

[Product Name] Micro Focus Software Inc. @ Software License Agreement
PLEASE READ THIS AGREEMENT CAREFULLY. BY INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE AND, IF APPLICABLE, RETURN THE ENTIRE UNUSED PACKAGE TO THE RESELLER WITH YOUR RECEIPT FOR A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED EXCEPT AS AUTHORIZED BY MICRO FOCUS SOFTWARE INC.

This Micro Focus Software Inc. Software License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and Micro Focus Software Inc., Inc. ("Micro Focus Software Inc."). The software product identified in the title of this Agreement for which You have acquired licenses, any media and accompanying documentation (collectively the "Software") is protected by the copyright laws and treaties of the United States ("LJ_S_") and other countries and is subject to the terms of this Agreement. Any update or support release to the Software that You may download or receive that is not accompanied by a license agreement expressly superseding this Agreement is Software and governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release.

The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than Micro Focus Software Inc. use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. Any third party software that may be provided with the Software is included for use at Your option.

LICENSED USE

Commercial Software.

[License Grant specific to product is described here.]

Evaluation Software. If the Software is an evaluation version or is provided to You for evaluation purposes, then Your license to use the Software is limited solely to internal evaluation purposes and in accordance with the terms of the evaluation offering under which You received the Software and expires go days from installation (or such other period as may be indicated within the Software). upon expiration of the evaluation period, You must discontinue use of the Software, return to an original state any actions performed by the Software, and delete the Software entirely from Your system. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time, so You should back up Your system and take other measures to prevent any loss of files or data.

RESTRICTIONS

PROPRIETARY AND CONFIDENTIAL

License Restrictions. Micro Focus Software Inc. reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. You may not (1) reverse engineer, decompile, or disassemble the Software except and only to the extent it is expressly permitted by applicable law; (2) modify, alter, rent, timeshare host or lease the Software or sublicense any of Your rights under this Agreement; or (3) transfer the Software or Your license rights under this Agreement, in whole or in part, without written permission by Micro Focus Software Inc.

Suite Licenses. If Your license to use the Software is for a suite of products, then for each license only one user may use the products in the suite. The suite license does not allow use of individual products in the suite by multiple users if licensed on a user basis or multiple devices if licensed on a device or server basis.

Upgrade Protection. If You purchased upgrade protection or maintenance under a Micro Focus Software Inc. program for this Software, the upgrade protection or maintenance only entitles You to upgrades of the Software as a whole and does not entitle You to upgrades of any component programs or products bundled with the Software or any individual products included in a suite if the Software is licensed as a suite of products. You may separately purchase upgrade protection for individual components of the Software if permitted by the applicable Micro Focus Software Inc. policies and programs.

Upgrade Software. This section applies to You if You have purchased the Software based upon upgrade pricing. "Original Product" means the product from which You are upgrading. You are authorized to use the Software only if You are the authorized user of the Original Product and You meet the following conditions: (1) You have acquired the right to use the Software solely to replace the Original Product that You acquired legally and that is qualified to be upgraded with the Software under the Micro Focus Software Inc. policies existing at the time You acquired the Software; (2) You installed and used the Original Product in accordance with the terms and conditions of the applicable license agreement; and (3) You will not sell or otherwise transfer possession of the Original Product.

Support. Micro Focus Software Inc. has no obligation to provide support unless You purchase an offering that expressly includes support services. If You make such a purchase and no separate agreement specifically applies to the support services, then the terms of this Agreement will govern the provision of such support services ("Services"). For more information on Micro Focus Software Inc.'s current support offerings, see <http://www.Micro Focus Software Inc.com/support>.

OWNERSHIP

No title to or ownership of the Software is transferred to You. Micro Focus Software Inc. and/or its licensors retain all right, title and interest in and to all intellectual property rights in the Software and Services, including any adaptations or copies thereof. You acquire only a conditional license to use the Software.

LIMITED WARRANTY

For ninety (90) days from Your date of purchase, Micro Focus Software Inc. warrants that (1) any media on which the Software is delivered is free from physical defects; and (2) the Software will substantially conform to the documentation accompanying the Software. If the defective items are returned to Micro Focus Software Inc. or if You report the nonconformity to Micro Focus Software Inc. within ninety (90) days from the date of purchase, Micro Focus Software Inc. will at its sole discretion either resolve the nonconformity or refund the license fees You paid for the Software. Any unauthorized use or modification to the Software voids this warranty. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. (The foregoing warranty does not apply to Software provided free of charge. SUCH SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.)

Services. Micro Focus Software Inc. warrants that any Services purchased will be supplied in a professional manner in accordance with generally accepted industry standards. This warranty will be effective for ninety (90) days following delivery of the Services. Upon any breach of this warranty, Micro Focus Software Inc.'s only obligation is to either correct the Services so that they comply with this warranty or at its option refund the amount You paid to Micro Focus Software Inc. for the portion of the Services that fail to comply with this warranty. As files may be altered or damaged in the course of Micro Focus Software Inc. providing technical services, You agree to take appropriate measures to isolate and back up Your systems.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

THE SOFTWARE IS ONLY COMPATIBLE WITH CERTAIN COMPUTERS AND OPERATING SYSTEMS. THE SOFTWARE IS NOT WARRANTED FOR NON-COMPATIBLE SYSTEMS. Call Micro Focus Software Inc. or Your reseller for information about compatibility.

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LIMITATION OF LIABILITY

Consequential Losses. NEITHER MICRO FOCUS SOFTWARE INC. NOR ANY OF ITS LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES ARISING OUT

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OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

Direct Damages_ IN NO EVENT WILL MICRO FOCUS SOFTWARE INC.'S AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR \$50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE). The above exclusions and limitations will not apply to claims relating to death or personal injury. In those jurisdictions that do not allow the exclusion or limitation of damages, Micro Focus Software Inc.'s liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

GENERAL TERMS

Term. This Agreement becomes effective on the date You legally acquire the Software and will automatically terminate if You breach any of its terms. If the Software is provided to You on a subscription basis, then Your right to possess or use the Software will terminate at the end of the applicable subscription period. Upon termination of this Agreement or any applicable subscription period, You must destroy the original and all copies of the Software or return them to Micro Focus Software Inc. and delete the Software from Your systems.

VERIFICATION. Licensor has the right to verify Your compliance with this Agreement You agree to:

- A. Implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Software;
 - B. Keep records sufficient to certify Your compliance with this Agreement (including its Product use Rights Appendix), and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your licensing and deployment of the Software; and
 - C. Allow a Licensor representative or an independent auditor ("Auditor") to inspect and audit Your computers and records, during Your normal business hours, for compliance with the licensing terms for Licensor's software products. Upon Licensor's and Auditor's presentation of their signed written confidentiality statement form to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that You have or at any time have had unlicensed installation, use of, or access to the Software, Licensor shall provide notice of deficiency and allow Licensee to acquire additional licenses per the terms of a new purchase order.
- Benchmark Testing_** This benchmark testing restriction applies to You if You are a software developer or licensor or if You are performing testing on the Software at the direction of or on behalf of a software developer or licensor You may not, without Micro Focus Software Inc.'s prior written consent not to be unreasonably withheld, publish or disclose to any third party the results of any benchmark test of the Software. If You are a licensor of products that are functionally similar to or compete with the Software ("Similar Products"), or are acting on behalf of such a licensor, and You publish or disclose benchmark information on the Software in violation of this restriction, then notwithstanding anything to the contrary in the Similar Product's end user license agreement, and in addition to any other remedies Micro Focus Software Inc. may have, Micro Focus Software Inc. shall have the right to perform benchmark testing on Similar Products and to disclose and publish that benchmark information and You hereby represent that You have authority to grant such right to Micro Focus Software Inc.

Open Source. Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Software.

Transfer. This Agreement may not be transferred or assigned without the prior written approval of Micro Focus Software Inc.

Law and Jurisdiction. This Agreement is governed by the laws of the State of Utah, U.S. Any action at law relating to this Agreement may only be brought before the courts of competent jurisdiction of the State of Utah. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, this Agreement is governed by the laws of that country, and any action at law may only be brought before a court of competent jurisdiction of that country.

Entire Agreement. This Agreement sets forth the entire understanding and agreement between You and Micro Focus Software Inc. and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Micro Focus Software Inc. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

Severability_ If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weapons end uses. Please consult the Bureau of Industry and Security web page before exporting Micro Focus Software Inc. products from the U.S. Please refer to <http://www.MicroFocusSoftwareInc.com/company/legal/> for more information on exporting Micro Focus Software Inc. software. Upon request, Micro Focus Software Inc. will provide You specific information regarding applicable restrictions. However, Micro Focus Software Inc. assumes no responsibility for Your failure to obtain any necessary export approvals.

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Contractor/Manufacturer is Micro Focus Software Inc., Inc., 1800 South Micro Focus Software Inc. Place, Provo, Utah 84606.

Other. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

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Universal Amendment to Software License Agreements for Micro Focus Software Inc., Inc. Software Products

PROPRIETARY AND CONFIDENTIAL

This Universal Amendment ("Amendment") is between Micro Focus Software Inc., Inc. ("Licensor") and the Authorized End User Licensee ("Authorized Licensee"), as defined below, and modifies Micro Focus Software Inc., Inc.'s End User License Agreements (including Volume License Agreements, as applicable) for Micro Focus Software Inc. software and related services ("License Agreement") purchased by an Authorized Licensee. The Amendment is effective as of the date the End User License Agreement is effective for the Authorized Licensee ("Effective Date").

Applicability. This Amendment applies to any order placed for Licensor's software or related services by an Authorized End User Licensee which is defined as: (a) a U.S. Government federal agency or organization; or (b) a purchasing agent authorized by a U.S. Government federal agency or organization to purchase on behalf of and solely for the benefit of the U.S. Government federal agency or organization as evidenced by a written authorization letter from the U.S. Government federal agency or organization. This Amendment does not apply to any individual person or to any organization that is a commercial entity or not authorized to purchase in accordance with Subsections 1 (a) or 1(b) above.

2. **Precedence.** Any conflict between the License Agreement and this Amendment shall be controlled by the terms of this Amendment to the maximum extent allowed by applicable Federal law.

3. **Contracting Authority.** Except as authorized under FAR 1.601(a) and 43.102, all provisions in the License Agreement which would allow any individual to bind the U.S. Government to the terms of the License Agreement or any modifications thereto are hereby deleted. Such provisions include the ability of the Licensor to unilaterally modify the terms of the License Agreement and any requirement to accept terms by means of use, download, or click-through agreements. Authorized Licensee agrees that when an authorized contracting officer of the Authorized Licensee places a task order for the Licensor software, the License Agreement in effect at the time, as amended by this Amendment, shall be legally binding on Authorized Licensee. If an Authorized Licensee receives Licensor software through a task order that is not authorized by the Authorized Licensee's authorized contracting officer or Authorized Licensee fails to acknowledge that the License Agreement is binding on Authorized Licensee, Authorized Licensee shall not be deemed to have any license to the Licensor software and Licensor reserves all rights, remedies, and enforcement actions and venues available under applicable state and federal law.

4. **Costs and Fees.** Pursuant to the Anti-Deficiency Act, 31 U.S.C. SS the U.S. Government does not agree to pay any future costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement obligating the U.S. Government to pay future costs, fees, or damages, or to otherwise expend un-appropriated funds, are hereby deleted unless imposed pursuant to a claim under the Contracts Dispute Act of 1978, as amended or other applicable Federal law. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted. If Authorized Licensee orders Licensor's software or related services from a reseller, then pricing and payment of the software license fee and any related fees for that transaction shall be between Authorized Licensee and the reseller.

5. **Taxes.** If Authorized Licensee is exempt by applicable law from paying sales, use or other taxes, then such exemption shall apply in accordance with applicable law.

6. **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the License Agreement as modified by this Amendment, unless an Authorized Licensee determines that it requires different terms of use and Licensor agrees in writing to such terms.

7. **Licensor Indemnification.** A License Agreement may contain terms that obligate Licensor to indemnify and defend an Authorized Licensee against a claim brought by a third party. In such case, Licensor agrees it cannot assume responsibility for or control of the litigation or any settlement negotiations, provided that Authorized Licensee (i) agrees that any litigation or settlement negotiation shall not bind Licensor to the final outcome of any such litigation or settlement; (ii) shall not impair Licensor's own rights, defenses, or claims against the claimant or the rights of Licensor's other licensees, (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Licensor; and (v) shall in good faith reasonably cooperate and consult with Licensor during the course of settlement negotiations and prosecution of the claim and shall afford Licensor free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Licensor's request to the extent permitted by 28 U.S.C. 516. Any contrary provisions in the License Agreement are hereby deleted. Licensor shall have the right to intervene in a proceeding described by this paragraph at its own expense through counsel of its choice.

8. **No Indemnification by Authorized Licensee.** In compliance with the Anti-Deficiency Act, 31 U.S.C. SS 1341 (a)(1)(B), an officer or employee of the U.S. Government may not involve the U.S. Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Any provision requiring the Licensee indemnify the Licensor in the License Agreement is deleted. This provision is not a waiver of Licensor's rights to seek other remedies authorized by applicable U.S. Federal law.

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

10. **Dispute Resolution and Venue.** Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes between Licensor and Authorized Licensee relating to the License Agreement and to this Amendment shall be resolved in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109). Authorized Licensee expressly acknowledges that Licensor shall have standing to bring a claim to enforce Licensor's rights under the License Agreement and this Amendment provided such claim is brought in a forum and venue allowed by applicable U. S. federal law.

11. **Termination.** Licensee's termination rights shall be governed by FAR 52.212-4(1) and (m). Any provisions permitting the Licensor to terminate immediately are hereby deleted.

12. **Equitable Remedies.** Any provision of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, is deleted to the extent the provision violates the U.S. Government's sovereign immunity or is in violation of an applicable federal law. Nothing in this paragraph shall prevent Licensor from filing a claim or limit damages under the Contract Disputes Act of 1978, as amended (41 USC sss*7101-7109).

13. **Monitoring Use of License and Audits.** Any provision in the License Agreement permitting Licensor to audit, inspect, or monitor use of the software for compliance with the License Agreement is contingent upon reasonable notice to the Authorized Licensee and adherence to reasonable security measures, including any requirements for personnel to be cleared prior to accessing sensitive facilities or equipment if clearances are normally required for such access.

14. **Advertisements and Endorsements.** Any provisions allowing Licensor to use the name or logo of any Authorized Licensee to advertise or to imply an endorsement of Licensor's products or services are hereby deleted. Unless specifically authorized by an Authorized Licensee, such use of the name or logo of any U.S. Government entity is prohibited.

15. **Confidentiality. Public Access to Information.** Licensor agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges that the License Agreement and this Amendment may be made available to the public. Except for Licensor's

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software and documentation included with the software, of which Licensor deems as proprietary and confidential, the Authorized Licensee shall not be prohibited from disclosing the terms of the Licensing Agreement and this Amendment, as required by law, including the Freedom of Information Act.

16. Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally compatible agreements, if any. Contractor indemnities do not constitute effective migration.

17. Limitation of Liability. Subject to the following: This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. ssss 3729-3733.

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

1. Scope. This Rider and the attached MModal Services, Ltd ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

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

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

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

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

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

e) Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

f) Force Majeure. Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

g) Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

h) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

i) Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

j) Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

k) Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

l) Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

m) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties.

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n) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

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

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A – MMODAL

This agreement and the underlying GSA Schedule Contract, Schedule pricelist, and purchase order which by this reference are incorporated herein (together referred to hereinafter as the "Agreement" or "End User Agreement") is a binding agreement between MModal Services, Ltd. and/or its Affiliates (hereinafter referred to as "M*Modal") and the entity identified in the purchase order as the licensee of software from M*Modal (hereinafter referred to as "Ordering Activity"). M*Modal and Ordering Activity may be referred to herein individually as a "Party" and collectively as the "Parties."

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

1.1 "Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual's identity and authorization to access and use the Software.

1.2 "Affiliate" means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. "Control" means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by Agreement. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall each be deemed Control.

1.3 "Authorized User" means each of the individuals employed or engaged by Ordering Activity at a Facility with appropriate Access Credentials to the Software and/or Services.

1.4 "Ordering Activity Data" means clinical information, in any form or medium, collected, downloaded or otherwise received from Ordering Activity or an Authorized User by or through the Software.

1.5 "Ordering Activity Systems" means the Ordering Activity's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Ordering Activity or through third-party services.

1.6 "Confidential Information" means business or technical information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), in any form or medium, tangible or intangible, in connection with this Agreement and (a) is designated either in writing or orally as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (d) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (e) becomes publicly available through no fault or breach of the Receiving Party.

1.7 "Deliverables" means work produced from the Software, created for and delivered to Ordering Activity under this Agreement.

1.8 "Facility" means the Ordering Activity location where Software is downloaded and/or installed.

1.9 "Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.10 "M*Modal Materials" means the Software, User Guide, M*Modal Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, hardware, software and other technologies and inventions possessed by M*Modal prior to the

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commencement of or independent of M*Modal's delivery of the Services or Products, or acquired, developed or used by M*Modal in the performance of Services or licensing of Software (other than Ordering Activity Confidential Information and Ordering Activity Data), and any modifications, enhancements and derivative works thereof, regardless of who or how created, and all Intellectual Property Rights attendant thereto.

1.11 "M*Modal Systems" means the information technology infrastructure, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by M*Modal or through third-party services, used by M*Modal in providing Services or Software.

1.12 "Services" means any services provided by M*Modal to Ordering Activity pursuant to the Agreement.

1.13 "Specifications" means the descriptions concerning the functionality, features, and requirements of the Software listed within the User Guide.

1.14 "Software" means M*Modal branded software applications including any maintenance releases and the appropriate User Guide Ordering Activity is granted a license to under this Agreement.

1.15 "Third Party Products" means any non-M*Modal branded materials or equipment.

1.16 "User Guide" means the operator and/or user manual and written instructions for the Software.

2 EFFECT OF TERMINATION. In the event of termination or expiration of this Agreement (a) M*Modal will cease providing any Services; (b) the licenses related to this Agreement shall terminate, unless expressly stated otherwise in the Agreement; (c) Ordering Activity shall immediately cease using any M*Modal Confidential Information and destroy all copies of M*Modal Materials and other M*Modal Confidential Information that Ordering Activity has not previously returned to M*Modal; and (d) M*Modal shall immediately cease using any Ordering Activity Confidential Information and destroy all copies of Ordering Activity Data and other Ordering Activity Confidential Information that M*Modal has not previously returned to Ordering Activity. Notwithstanding the above, a Party may retain a copy of the other's Confidential Information to comply with its legal obligations, or to the extent Confidential Information is embedded in the Receiving Party's off-site disaster recovery or information technology backup systems until such systems are purged in accordance with the Receiving Party's systematic back-up and archiving procedures.

3 RESERVED.

4 INTELLECTUAL PROPERTY

4.1 General: Except for the limited license(s) granted herein, all right, title and interest in and to M*Modal Materials are retained by M*Modal or its licensors. Absent the prior, written consent of M*Modal, neither Ordering Activity nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal notice or legend contained in or on copies thereof. Ordering Activity shall make reasonable efforts to protect M*Modal Materials from unauthorized use. Ordering Activity unconditionally and irrevocably assigns to M*Modal its entire right, title and interest in and to any Intellectual Property Rights that Ordering Activity may now or hereafter have in or relating to the M*Modal Materials (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, Agreement, assignment or otherwise. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

4.2 Continuous Improvement: Ordering Activity acknowledges and agrees that M*Modal may use, compile (including creating statistical or other models), and analyze Ordering Activity Data to (a) improve, develop or otherwise modify M*Modal Materials, and (b) use computerized processes to tailor and deliver to Ordering Activity relevant communications. To the extent Ordering Activity Data is used or compiled in or with any M*Modal Materials, all Intellectual Property Rights in such M*Modal Materials shall be solely owned by M*Modal.

4.3 Ordering Activity Data and Deliverables: Except for the limited purpose of performing Services or providing Software, and except for the limited license(s) granted herein, all right, title and interest in and to Ordering Activity Data is retained by Ordering Activity. Subject to this Agreement, and except to the extent Deliverables include any M*Modal Materials or M*Modal Confidential Information, M*Modal hereby assigns to Ordering Activity all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, contract, assignment or otherwise. Ordering Activity is responsible for making and maintaining its own backup copies of any Ordering Activity Data and Deliverables.

4.4 License Grant: Any license granted to Ordering Activity in the Software (a) is non-exclusive and non-transferable; and (b) extends to Ordering Activity and Authorized Users to access and use the Software in the United States solely for Ordering Activity's internal business purposes. The Software shall be downloaded and installed on only computing device for a single Authorized User. The term of the license shall be set forth in the ordering documents.

4.5 License Restrictions: Without expanding the limited license grant herein, Ordering Activity and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer the Software, or take any action in order to derive a source code equivalent of the Software, (b) release to any third party results of any benchmark, performance, or functionality tests performed on the Software, (c) release to any third party results obtained through use of the Software other than the Deliverables, (d) incorporate, bundle or pre-load any portion of the Software into any software or computing device of Ordering Activity except as expressly set forth in this Agreement, (e) copy, modify or create derivative works of the Software, (f) sublicense the Products or any portion thereof to a third party, or otherwise permit use of the Software including, without limitation, timesharing or networking use by any third party, except as expressly set forth in this Agreement, (g) link, combine or use the Software with any open source software without the written permission of M*Modal if such linkage, combination or use would create a risk, or have the "viral" effect, of disclosing or licensing M*Modal source code or rendering any M*Modal patent unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto, or (h) cause the Software to interact with the functionality of a Third Party Product similar to that contained in the Software. For clarification, a Third Party Product shall not be deemed to "interact with" the Software if such Third Party Product does not export or import data from the Software to such Third Party Product, or vice versa.

5 M*MODAL WARRANTIES AND DISCLAIMERS.

5.1 M*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M*Modal, or shipment in all other cases (the "Warranty Period"), Products shall materially function in accordance with applicable Specifications and the media on which Software is distributed shall be free from defects in materials and workmanship. Ordering Activity must provide M*Modal with written notice of breach of this warranty during the Warranty Period setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity's sole and exclusive remedy, M*Modal shall, at M*Modal's option, (a) repair or replace that portion of the Products effected.

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5.2 M*Modal warrants that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Ordering Activity must provide M*Modal with written notice of breach of this warranty within thirty (30) days after performance of Services setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity's sole and exclusive remedy, M*Modal shall, at M*Modal's option re-perform the Services.

5.3 The limited warranties set forth above do not apply to problems arising out of or related to:

5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;

5.3.2 Any operation or use of, or other activity relating to, the Products other than as specified in the User Guide, including any incorporation in the Products of, or combination, operation or use of the Products in or with, any technology or service not specified for Ordering Activity's use in the User Guide or expressly authorized by M*Modal in writing;

5.3.3 Ordering Activity's or any Authorized User's negligence, abuse, misapplication or misuse of the Products;

5.3.4 Ordering Activity's failure to promptly install maintenance releases that M*Modal has previously made available to Ordering Activity;

5.3.5 Operation of or access to Ordering Activity Systems; and

5.3.6 Third Party Products.

5.4 To the extent applicable, M*Modal shall pass through to Ordering Activity any warranty provided to M*Modal for Third Party Products.

5.5 OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH ABOVE OR IN THIS AGREEMENT, M*MODAL MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR PRODUCTS. M*MODAL DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. M*MODAL DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6 ORDERING ACTIVITY WARRANTIES AND ACKNOWLEDGEMENTS. Ordering Activity warrants that Ordering Activity and any person or entity using the Software shall (a) use the Software consistent with the User Guide and this Agreement; (b) comply with all applicable laws and regulations, including export and import laws, in connection with receipt or use of the Software; (c) be responsible for the accuracy and legality of information provided to M*Modal; and (d) be responsible for identifying errors in the results from use of the Software or before relying on such results. Ordering Activity agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by M*Modal regarding future functionality or features. Ordering Activity further acknowledges that M*Modal may make changes to the Software determined reasonably necessary by M*Modal so long as such changes do not materially decrease the functionality of the Software.

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

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

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

MOBILEIRON INC.

MOBILEIRON INC. LICENSE, WARRANTY AND SUPPORT TERMS

This End User License Agreement ("Agreement") is entered into as of the later date signed below ("Effective Date") by and between MobileIron, Inc. ("MobileIron"), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller ("Customer").

This Agreement consists of this page, the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor's prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer's standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

MOBILEIRON, INC.	CUSTOMER:
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Principal Place of Business: 415 East Middlefield Road, Mountain View, CA 94043	Principal Place of Business:
Date:	Date:
Notices to MobileIron: MobileIron, Inc. Attn: General Counsel 415 East Middlefield Road Mountain View, CA 94043 With an email copy to: contracts@mobileiron.com	Notices to Customer: With an email copy to (if applicable):

TERMS AND CONDITIONS

1. **Definitions.**
 - a. "Documentation" means the written and/or electronic release notes, implementation guides, or other published technical documentation about specific Software that is provided by MobileIron to Customer together with the delivery of the Software.
 - b. "License Term" means the term of the license granted for specific Software, as identified in the relevant Order and starting when the Software is first made available for download by Customer.
 - c. "Order" means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).

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- d. "Software" means the object code version of MobileIron proprietary computer programs (including any software accessed as a service) described in the relevant Order, including any Documentation and Updates.
- e. "Updates" means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

2. **License Grant.**

- a. **Software License.** Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to use the Software solely for Customer's internal use with Customer's ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide Software licenses to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.
- b. **Trial License.** The terms applicable to Software apply to trial copies of Software ("Trial Software"), except for the following different or additional terms: (i) the License Term for Trial Software is thirty (30) days, which MobileIron may extend upon written consent; (ii) the trial period shall commence on the date that MobileIron delivers the Trial Software to Customer; (iii) Trial Software is provided "AS IS" without warranty of any kind, and MobileIron disclaims all warranties, indemnities, and all other liabilities for Trial Software; (iv) Customer is not entitled to any support and maintenance services or any Updates for Trial Software; and (v) either party may terminate the license for Trial Software upon five (5) days' written notice to the other party.

3. **Use Restrictions.** As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the Software (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the Software; (c) distribute, sell, license, lease, transfer, or otherwise provide any Software to third parties except as expressly provided in this Agreement; (d) provide the Software as a service to third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) unbundle any component of any Software; or (f) use the Documentation except for supporting Customer's authorized use of the Software; or (g) use the Software to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any Software accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the Software or Documentation, or to provide management, hosting, support or similar services with regard to the Software without the prior written consent of MobileIron. "MobileIron Competitor" means Good Technology by Blackberry, AirWatch by VMWare, Maas360 by IBM Corporation, XenMobile by Citrix, and InTune by Microsoft.

4. **Payment; Additional Licenses; Reporting.** Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron's net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron's then-current price list or as specified in the Order or in the Reseller's prime contract. Upon written request by MobileIron, Customer shall provide a usage report, which in certain cases may be generated using the Software, or provide MobileIron reasonable access to the system administrator logs or portal solely for the purpose of certifying the number and type of registered devices or users. MobileIron's infrastructure may enable MobileIron to access the device or user count for the Software.

5. **Confidentiality.**

- a. **Definition.** "Confidential Information" means non-public information provided by one party ("Discloser") to the other ("Recipient") that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser's information. MobileIron Confidential Information includes but is not limited to all Software (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the Software), Documentation and its derivatives, and MobileIron's pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.
- b. **Non-disclosure and Non-Use.** The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser's Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser's Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser's Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser's option, the Discloser's Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1905.

6. **Ownership.** All Software is licensed and not sold. MobileIron and its suppliers- own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the Software and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services ("Feedback"). To the extent Customer does provide Feedback to MobileIron,

Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.

7. **Indemnity.**

- a. **Indemnification.** Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees ("Customer Indemnitee(s)") by an unaffiliated third party alleging that Customer's use of the Software infringes or violates that third party's intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.
- b. **Procedures.** MobileIron's indemnification obligation is conditioned on Customer Indemnitee(s): (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer's prior written consent, and (iii) providing MobileIron all reasonable assistance in connection with the defense or settlement of such claim, at MobileIron's cost and expense.
- c. **Remedies.** If such a claim occurs or in MobileIron's opinion is reasonably likely to occur, MobileIron may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable Software, (ii) modify or replace the applicable Software to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer's license to the affected portion of applicable Software and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid by Customer corresponding to such Software. In the case of a perpetual license, the unused portion of the license fees shall be determined on a pro-rata basis over a three (3) year period starting from the initial delivery of the Software.
- d. **Exclusions.** MobileIron shall have no obligations under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable Software not made by or at the direction of MobileIron, (ii) any combination or use of the applicable Software with any third party equipment, products or systems, to the extent that such claim is based on such combination or use, (iii) Customer's continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer's failure to use Updates made available by MobileIron, (v) Customer's failure to use the Software in accordance with the applicable Documentation, and/or (vi) use of the Software outside the scope of the license granted under this Agreement. The remedies specified in this Section 7 constitute Customer's sole and exclusive remedies, and MobileIron's entire liability, with respect to infringement of third party intellectual property rights.

8. **Support and Maintenance Services.** Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

9. **Warranties.**

- a. **Software.** For ninety (90) days following the commencement of the applicable License Term, MobileIron represents and warrants to Customer that the Software materially conforms to the specifications specified in the relevant Documentation. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to repair or replace such Software or refund the license and associated support and maintenance fees paid for such non-conforming Software, in which case the license to the Software shall terminate.
- b. **Professional Services.** Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.
- c. **Exclusions.** The express warranties do not apply if the applicable Software or hardware (i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.
- d. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SOFTWARE, AND SERVICES ARE PROVIDED "AS IS," AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. **Term and Termination.** The license granted herein with respect to specific Software shall remain effective until the License Term for the relevant Software expires or the license for the relevant Software is terminated. This Agreement shall remain effective until the earliest of (a) termination in accordance with this Section 10, (b) expiration of the applicable License Term or (c) expiration of the applicable Support & Maintenance Term. If MobileIron agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days' written notice of a material breach by the other party, unless the breach is cured within the 30-day notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. For perpetual licenses only, the license grant in Section 2 shall survive expiration or termination of this Agreement unless MobileIron has terminated due to Customer's uncured material breach. In addition, Sections 1, 3-7, and 9-12, and all liabilities that

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accrue prior to termination shall survive expiration or termination of this Agreement for any reason. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.

11. **Limitation of Liabilities.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SOFTWARE, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.
12. **General.**
- a. **Export/Import.** Software and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.
- b. **U.S. Government Rights.** The Software and Documentation are "commercial items" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with MobileIron to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Software and Documentation and return the Software and Documentation and any other software or technical data delivered as part of the Software and Documentation, unused, to MobileIron. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.
- c. **In-Licensed Materials and Open Source.** The Software may contain or may interoperate with software services or other technology that is not owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free software licenses ("In-Licensed Materials"). The In-Licensed Materials may be subject to additional terms and conditions, as identified on Schedule A, attached hereto, or as otherwise made available to Customer. Such terms and conditions are incorporated by reference herein. To the extent MobileIron uses open source software in its Software, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer, provided Customer uses the Software in accordance with this Agreement.
- d. **Governing Law and Jurisdiction.** This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with Federal common law of the United States and where there is no Federal common law, the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in Santa Clara, California, and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply. The foregoing is subject to the Contract Disputes Act.
- e. **Assignment.** Neither party may assign this Agreement without prior written consent of the other party, provided however, subject to FAR 42.12, either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.
- f. **Data Communications.** MobileIron shall only collect, access, use, store, safeguard, disclose and transfer ("Process") Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the Software and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. "Personal Information" means any information relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in performance by MobileIron of its obligations under this Agreement. MobileIron collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. MobileIron may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

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- g. Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron's or its suppliers' intellectual property rights in Software or either party's Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under Federal procurement law, to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.
- h. Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the Software, including in a list of MobileIron customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any MobileIron product or service.
- i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.
- j. Waiver & Severability; Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.

MOBILEIRON, INC.
Schedule A: Terms and Conditions Related to In-Licensed Materials and Third Party Products
(version August 12, 2015)

MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the "Customer Agreement"), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed "Software" (and subject to the same terms and conditions applicable to "Software") under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise "In-Licensed Materials" means software, services or other technology software that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron "Silver" or "Gold" Bundle, also sold as Core:

1. **Cell Tower Information** (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such latitude and longitude location information to create a latitude/longitude lookup database for cellular towers.
2. **SMS Messaging.** (a) Customer will not use SMS messaging service to transmit inappropriate content. Inappropriate content includes any content that (a) is unsolicited, (b) causes the introduction of viruses, worms, Trojan horses, e-mail bombs, cancelbots or other similar computer programming routines, (c) is unlawful or offensive as determined by MobileIron's suppliers in their sole discretion, (d) is misleading or inaccurate, or (e) infringes the intellectual property of any person.
3. **Microsoft® Exchange Activesync.** (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any smartphone or other device software that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer's behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer's employees, agents and/or contractors.
4. **Email+.** (a) "Email+ Device Software" means MobileIron's Email+ client device email software delivered by MobileIron to Customer, including any updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) "EAS-Enabled Server" means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Windows Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync™ Protocol. (c) MobileIron grants to Customer a non-exclusive right to permit Customer Representatives to use and reproduce the Email+ Software (in object code form) only: (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron's Software and (ii) for Customer's use with services provided by EAS-Enabled Servers.
5. **Splunk Universal Forwarder.** (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner not related to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to the Splunk Universal Forwarder.
6. **Mobile@Work In-House App SDK.** (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer's own branding. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as "Software," except that: (i) Customer may only use this SDK to brand Mobile@Work with its own branding; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron "Platinum" Bundle (includes the terms and conditions for the MobileIron "Silver" and "Gold" Bundle as well as the additional terms below):

1. MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer's help-desk administrator to remotely view the screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.
2. **Authorized Developer.** Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron's provision of Help@Work for iOS to Customer.
3. **Help@Work for iOS Display Finder.** If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.
4. **ServiceConnect Integrations.** (a) "ServiceConnect Integrations" are software modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party ("Underlying Third Party"). (b) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer's use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with

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the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (e) The Underlying Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperability with the ServiceConnect Integration. MobileIron shall have no liability for any such discontinuance or disruption.

MOBILEIRON, INC.
Schedule B: Support & Maintenance Agreement
(version May 26, 2016)

If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement ("SMA") applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

1. Definitions.

- a. "Designated Support Contact" means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.
- b. "Incident" means when the Supported Software does not seem to materially perform in accordance with the specifications specified in the relevant Documentation.
- c. "Response" means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.
- c. "Support & Maintenance Term" means the duration of support and/or maintenance services that MobileIron must provide, as specified in the relevant Order. The initial Support & Maintenance Term shall commence when the Software is first made available for download by Customer. Any renewal Support & Maintenance Term shall commence upon the day immediately following the end of the then-current Support & Maintenance Term.
- d. "Supported Software" means the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release. (For example, if Software shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)

2. Support Services.

- a. Support and Trouble Tickets. During the Support & Maintenance Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron's Support Portal (available at <https://help.mobileiron.com>) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the trouble ticket without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron's request or receipt of a patch or workaround (as applicable). Support services for Supported Software are available to Customers who have purchased direct support services or higher, for twenty-four hours per day and seven days per week.
- b. Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below:

Severity Level	Description	Initial Response Time for Direct Support	Initial Response Time for Premium Plus Support
1	A severity one (1) issue is a catastrophic production problem which may severely impact Customer's production systems or that causes Customer's production systems to go down or not function. There may be a loss of production data and no procedural work around exists.	1 hour	30 minutes
2	A severity two (2) issue is an issue where Customer's production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer's business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer's High Availability Configuration.	4 hours	2 hours
3	A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer's operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.	1 business day	1 business day
4	A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.	5 business days	5 business days

* MobileIron business hours are 6 am-6 pm PT, Monday through Friday (excluding holidays)

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b. **Limitations.** MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the Supported Software has been modified or repaired, except by or at the direction of MobileIron, (iii) if the Supported Software has not been installed, used or maintained in accordance with the Documentation, (iv) the Supported Software is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on, or integrated with any Supported Software.

3. **Maintenance Services.**

- a. **Maintenance.** During the Support & Maintenance Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the Software and, for security fixes only, the immediately prior release.
- b. **Reinstatement.** If the Support & Maintenance Term expires without renewal, this SMA shall terminate as of the expiration date. Customer may reinstate this SMA by paying MobileIron an amount equal to the support and/or maintenance fees that would have been payable during the period of lapse and a reinstatement fee.

4. **General.** MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees).

**MOBILEIRON, INC.
SOFTWARE-AS-A-SERVICE (SAAS) TERMS OF USE
FEDERAL END USER
(version May 26, 2016)**

This Software-as-a-Service Terms of Use ("Agreement") is entered into as of the later date signed below ("Effective Date") by and between MobileIron, Inc. ("MobileIron"), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller ("Customer").

This Agreement consists of this page, the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor's prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer's standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

MOBILEIRON, INC.	CUSTOMER:
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Principal Place of Business: 415 East Middlefield Road, Mountain View, CA 94043	Principal Place of Business:
Date:	Date:
Notices to MobileIron:	Notices to Customer:

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MobileIron, Inc.
Attn: General Counsel
415 East Middlefield Road
Mountain View, CA 94043
With an email copy to: contracts@mobileiron.com

With an email copy to (if applicable):

TERMS AND CONDITIONS

3. **Definitions.**

- a. "Documentation" means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable SaaS Product that is provided by MobileIron to Customer together with access to the SaaS Product.
- b. "License Term" means the term of the access rights granted for the SaaS Product, as identified in the relevant Order, starting when MobileIron delivers to Customer the relevant credentials to access and use the SaaS Product.
- c. "Order" means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).
- d. "SaaS Product" means the mobile enterprise management services made available by access to and use of software hosted by MobileIron to which Customer has purchased a license under the relevant Order. References in this Agreement to the SaaS Product shall include the Software.
- e. "Software" means the object code version of MobileIron proprietary computer programs made available by MobileIron for download by Customer for use in connection with any SaaS Product, including any Documentation and Updates.
- f. "Updates" means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

4. **Rights of Access and Use.**

- a. **Access and Use.** Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to access and use the SaaS Product and to copy, and install the Software, in each case, solely for Customer's internal use with Customer's ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide access to the SaaS Product to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.
- b. **Trial License.** The terms applicable to the SaaS Product apply to trial copies of the SaaS Product ("Trial Product"), except for the following different or additional terms: (i) the License Term for Trial Product is thirty (30) days, which MobileIron may extend upon written consent; (ii) the trial period shall commence on the date that MobileIron first provides Customer credentials to access the Trial Product; (iii) Trial Product is provided "AS IS" without warranty of any kind, and MobileIron disclaims all warranties, indemnities, and all other liabilities for Trial Product; (iv) Customer is not entitled to any support and maintenance services or any Updates for Trial Product; and (v) either party may terminate the license for Trial Product upon five (5) days' written notice to the other party.

3. **Use Restrictions; Customer Obligations.** As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the SaaS Product (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the SaaS Product; (c) distribute, sell, license, lease, transfer, or otherwise provide any SaaS Product to third parties except as expressly provided in this Agreement; (d) provide the SaaS Product as a service to unaffiliated third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) unbundle any component of any SaaS Product; or (f) use the Documentation except for supporting Customer's authorized use of the SaaS Product; or (g) use the SaaS Product to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any SaaS Product accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the SaaS Product or Documentation, or to provide management, hosting, support or similar services with regard to the SaaS Product without the prior written consent of MobileIron. "MobileIron Competitor" means Good Technology by BlackBerry, AirWatch by VMWare, Maas360 by IBM Corporation, XenMobile by Citrix, and InTune by Microsoft. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any SaaS Product and notify MobileIron promptly of any such unauthorized access or use.

13. **Payment; Additional Licenses; Reporting.** Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron's net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron's then-current price list or as specified in the Order or in the Reseller's prime contract. Customer acknowledges that MobileIron's delivery and support infrastructure may enable MobileIron to access the device or user count for the SaaS Product. Upon written notice by MobileIron, Customer shall certify in writing the number and type of registered devices or users.

14. **Confidentiality.**

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- a. **Definition.** "Confidential Information" means non-public information provided by one party ("Discloser") to the other ("Recipient") that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser's information. MobileIron Confidential Information includes but is not limited to all SaaS Products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the SaaS Products), Documentation and its derivatives, and MobileIron's pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.
- b. **Non-disclosure and Non-Use.** The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser's Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser's Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser's Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser's option, the Discloser's Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1905
15. **Ownership.** MobileIron and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the SaaS Product and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services ("Feedback"). To the extent Customer does provide Feedback to MobileIron, Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.
16. **Indemnity.**
- a. **Indemnification by MobileIron.** Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees ("Customer Indemnitee(s)") by an unaffiliated third party alleging that Customer's use of the SaaS Product infringes or violates that third party's intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.
- b. **Remedies.** If a claim under Section 7.a occurs or in MobileIron's opinion is reasonably likely to occur, MobileIron may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable SaaS Product, (ii) modify or replace the applicable SaaS Product to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer's license to the affected portion of applicable SaaS Product and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid by Customer corresponding to such SaaS Product.
- c. **Exclusions.** MobileIron shall have no obligations under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable SaaS Product not made by or at the direction of MobileIron, (ii) any combination or use of the applicable SaaS Product with any third party equipment, products or systems, to the extent that such claim is based on such combination or use, (iii) Customer's continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer's failure to use Updates made available by MobileIron, (v) Customer's failure to use the SaaS Product in accordance with the applicable Documentation, and/or (vi) use of the SaaS Product outside the scope of the license granted under this Agreement. This Section 7 constitutes Customer's sole and exclusive remedies, and MobileIron's entire liability, with respect to infringement of third party intellectual property rights.
- d. **Procedures.** MobileIron's indemnification obligation is conditioned on Customer: (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer's prior written consent, and (iii) providing MobileIron all reasonable assistance in connection with the defense or settlement of such claim, at MobileIron's cost and expense.
17. **Support and Maintenance Services.** Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.
18. **Warranties.**
- a. **SaaS Product.** MobileIron represents and warrants to Customer that the SaaS Product materially conforms to the specifications specified in the relevant Documentation. Customer must notify MobileIron of any warranty deficiencies within thirty (30) days from the provision of the deficient SaaS Product. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to (i) repair such SaaS Product (and/or deliver new applicable Software) or (ii) terminate the applicable License Term and refund any prepaid, unused subscription fees paid to MobileIron for the unused period of any such terminated License Term.
- b. **Professional Services.** Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer's sole and exclusive remedy and the entire liability of MobileIron for MobileIron's breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

- c. **Exclusions.** The express warranties do not apply if the applicable SaaS Product(i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.
- d. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SAAS PRODUCT, AND SERVICES ARE PROVIDED "AS IS," AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
19. **Term and Termination.** The access rights granted herein with respect to the SaaS Product shall remain effective until the License Term for the relevant SaaS Product expires or the license for the relevant SaaS Product is terminated. This Agreement shall remain effective until the earliest of termination in accordance with this Section 10, or expiration of the applicable License Term. If MobileIron agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days' written notice of a material breach by the other party (or three (3) business days in the case of a failure to pay), unless the breach is cured within the notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. For ninety (90) days after the expiration or termination of this Agreement, upon Customer's request, MobileIron shall permit Customer to access the SaaS Product solely to the extent necessary for Customer to retrieve applications uploaded to such SaaS Product by Customer. After such 90-day period, MobileIron may delete all Customer Data in MobileIron's possession or control. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.
20. **Limitation of Liabilities.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SAAS PRODUCT, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.
21. **General.**
- a. **Export/Import.** The SaaS Product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.
- b. **U.S. Government Rights. U.S. Government Rights.** The Software and Documentation are "commercial items" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with MobileIron to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Software and Documentation and return the Software and Documentation and any other software or technical data delivered as part of the Software and Documentation, unused, to MobileIron. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.
- c. **In-Licensed Materials and Open Source.** The SaaS Product may contain or may interoperate with software services or other technology that is not owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free software licenses ("In-Licensed Materials"). The In-Licensed Materials may be subject to additional terms and conditions, as identified on Schedule A, attached hereto or as otherwise made available to Customer. Such terms and conditions are incorporated by reference herein. To the extent MobileIron uses open source software in its SaaS Product, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer, provided Customer uses the SaaS Product in accordance with this Agreement.

- d. Governing Law and Jurisdiction. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with Federal common law of the United States and where there is no Federal common law, the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in Santa Clara County, California, and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply. The foregoing is subject to the Contract Disputes Act.
- e. Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however subject to FAR 42.12, either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.
- f. Data Communications. MobileIron shall only collect, access, use, store, safeguard, disclose and transfer ("Process") Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the SaaS Product and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. "Personal Information" means any information relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in performance by MobileIron of its obligations under this Agreement. MobileIron collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. MobileIron may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.
- g. Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron's or its suppliers' intellectual property rights in the SaaS Product or either party's Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under Federal procurement law, to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.
- h. Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the SaaS Product, including in a list of MobileIron customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any MobileIron product or service.
- i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.
- j. Waiver & Severability; Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.

MOBILEIRON, INC.
Schedule A: Terms and Conditions Related to In-Licensed Materials
(version August 12, 2015)

MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the "Customer Agreement"), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed "Software" (and subject to the same terms and conditions applicable to "Software") under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise "In-Licensed Materials" means software, services or other technology software that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron "Silver" or "Gold" Bundle, also sold as Core:

1. **Cell Tower Information** (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such latitude and longitude location information to create a latitude/longitude lookup database for cellular towers.
2. **SMS Messaging.** (a) Customer will not use SMS messaging service to transmit inappropriate content. Inappropriate content includes any content that (a) is unsolicited, (b) causes the introduction of viruses, worms, Trojan horses, e-mail bombs, cancelbots or other similar computer programming routines, (c) is unlawful or offensive as determined by MobileIron's suppliers in their sole discretion, (d) is misleading or inaccurate, or (e) infringes the intellectual property of any person.
3. **Microsoft® Exchange Activesync.** (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any smartphone or other device software that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer's behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer's employees, agents and/or contractors.
4. **Email+.** (a) "Email+ Device Software" means MobileIron's Email+ client device email software delivered by MobileIron to Customer, including any updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) "EAS-Enabled Server" means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Windows Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync™ Protocol. (c) MobileIron grants to Customer a non-exclusive right to permit Customer Representatives to use and reproduce the Email+ Software (in object code form) only: (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron's Software and (ii) for Customer's use with services provided by EAS-Enabled Servers.
5. **Splunk Universal Forwarder.** (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner not related to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to the Splunk Universal Forwarder.
6. **Mobile@Work In-House App SDK.** (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer's own branding. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as "Software," except that: (i) Customer may only use this SDK to brand Mobile@Work with its own branding; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron "Platinum" Bundle (includes the terms and conditions for the MobileIron "Silver" and "Gold" Bundle as well as the additional terms below):

1. MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer's help-desk administrator to remotely view the screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.
2. **Authorized Developer.** Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron's provision of Help@Work for iOS to Customer.
3. **Help@Work for iOS Display Finder.** If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.

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4. ServiceConnect Integrations. (a) "ServiceConnect Integrations" are software modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party ("Underlying Third Party"). (b) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer's use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (e) The Underlying Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperation with the ServiceConnect Integration. MobileIron shall have no liability for any such discontinuance or disruption.

MOBILEIRON, INC.
Schedule B: Support & Maintenance Agreement
(version May 26, 2016)

If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement ("SMA") applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

5. Definitions.

- a. "Designated Support Contact" means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.
- b. "Direct Support Case Pack" means a direct support package that limits the number of Incidents for which the Customer is able to obtain direct support from MobileIron.
- c. "Incident" means when the SaaS Product does not seem to materially perform in accordance with the specifications specified in the relevant Documentation.
- d. "Response" means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.

6. Support Services.

- a. Support and Trouble Tickets. During the License Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron's Support Portal (available at <https://help.mobileiron.com>) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the trouble ticket without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron's request or receipt of a patch or workaround (as applicable). Support services for the SaaS Product are available for twenty-four hours per day and seven days per week, unless the Customer has purchased a Direct Support Case Pack, in which case support services are available during business hours, which are 6 am-6 pm pacific, Monday through Friday (excluding holidays).
- b. Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below. The Response times set forth below shall not apply to the Direct Support Case Pack:

Severity Level	Description	Initial Response Time for Standard SaaS Subscription	Initial Response Time for Premium Plus Support
1	A severity one (1) issue is a catastrophic production problem which may severely impact Customer's production systems or that causes Customer's production systems to go down or not function. There may be a loss of production data and no procedural work around exists.	1 hour	30 minutes
2	A severity two (2) issue is an issue where Customer's production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer's business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer's High Availability Configuration.	4 hours	2 hours
3	A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer's operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.	1 business day	1 business day
4	A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.	5 business days	5 business days

- b. Limitations. MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the SaaS Product has been modified or repaired, except by or at the direction of MobileIron, (iii) if the SaaS Product has not been installed, used or maintained in accordance with the Documentation, (iv) the SaaS Product is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on or integrated, with any SaaS Product. MobileIron's obligations to provide maintenance for software installed on Customer's premise (e.g., Sentry or Connector) shall apply only to the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release.

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(For example, if Sentry shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)

7. **Maintenance Services.** During the License Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the SaaS Product and, for security fixes only, the immediately prior release.
8. **General.** MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron (including in SaaS Product availability) shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees) ("Force Majeure").

Multivista Franchise Systems, LLC
203-38 Fell Avenue
North Vancouver B.C., Canada

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

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

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- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MULTIVISTA

MULTIVISTA LICENSE, WARRANTY AND SUPPORT TERMS

Service Descriptions

This Attachment A described below combines Contractor's state-of-the-art Multivista indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones. The Multivista system will utilize actual construction drawings, making such drawings interactive and accessible anywhere through a secure on-line interface. For all documentation referenced herein, indexing and navigation is organized by both time and location throughout the Project.

Site Survey and Progressions Sets:

"Progression" photo sets are performed at pre-determined intervals throughout the duration of construction. Progression photos broadly track all aspects of construction through time.

The Site Survey and Progression Sets are generally included in all subscriptions to the Multivista system. They are critical tools for the communication and project management aspects of all product types.

- Site Survey (Pre-Construction): The pre-construction site survey is a one-time shoot that provides coverage of the site and its immediately surrounding area to carefully memorialize conditions before a project begins.
- Exterior Progression Shoots: Exterior Progression photos are taken from key perspectives along site perimeters and 360 degrees around each building envelope during erection. Exterior progressions track the construction of building elevations and all work within the immediate vicinity of the exterior of the building, including some site work. Exterior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection. Exterior progression documentation typically begins at substantial framing, and not at commencement of site work. Exterior progressions can begin at commencement of site work for the purpose of *broadly* capturing site work upon request.
- Interior Progression Shoots: Interior Progression photos track the interior improvements from when interior work begins (typically, at the commencement of stud-work) to completion. Interior Progressions broadly track the improvements from logical perspectives. Interior Progressions are designed to provide comprehensive coverage of the various trades coming together over time. Interior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection.

Detailed Sets ("Exact-Built[®]):

Detailed photo sets serve as "visual as-builts" which are performed at critical milestones during construction. They offer a higher concentration of photos and perspectives than the Progression shoots and/or focus on details of particular interest or importance to the Ordering Activity.

The Fundamental Exact-Built[®]:

Depending on the product type, subscriptions to the Multivista System generally include at least two out of three of the following Exact-Built[®] shoots which, when combined with the Site Survey and Progression Shoots, result in an unparalleled permanent documentation package superior to any known "best-practices."

- Pre-Slab Exact-Built[®]: This process will include overlapping images of all roughed-in MEP, cabling systems and other structural components *within* the building envelope(s), post inspection (where necessary), just prior to the concrete being poured.

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- Interior MEP Exact-Built®: Mechanical, Electrical, Plumbing (MEP) and all other systems in walls and ceilings will be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process provides a high concentration of overlapping coverage allowing for all finished systems to be viewed in great detail. This Exact-Built® sweeps the entire project: every wall and every ceiling, on every floor of every building, throughout the entire Project. Note that this will not capture pre-slab, site, or in-slab-on-deck systems or other "horizontal" MEP work.
- Interior Finished Condition Exact-Built®: At Certificate of Occupancy or other "finished" milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.
- Elevation Exact-Built®: – documentation of the entire building and skin capturing all exterior facades of building, to include windows and exterior skin to be determined by the Ordering Activity.

Custom Exact-Built®:

These Exact-Built® shoots are project-specific Detailed Sets that are not generally included in standard subscriptions to the service, but can be added to scope upon request.

- Existing Condition Exact-Built®: At Certificate of Occupancy or other "finished" milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.
- Slideshows: Slideshows capture miscellaneous occurrences or conditions while a photographer is on-site to perform any other shoot in the Order. These conditions are those that do not fit neatly into the building envelope interface (i.e., materials stored on site). Slideshows are not linked to architectural plans in the same manner as the formal shoots; however, they will be dated, labeled and stored on the Ordering Activity's interface. Thus, all of Ordering Activity's information remains in one "place." Owner and Superintendent photograph collections of critical events or conditions may also be provided to Contractor for incorporation into the Slideshow collections.

Web Camera Hosting Packages

Web hosting is integrated into the Multivista Documentation Software. This includes live 24/7 image stream; static images (1920x1080 resolution), archived every 15 minutes between 6:00am and 6:00pm local time with ability to perform historical review; camera stream re-broadcasting capable of supporting up to twelve (12) concurrent users. Installation and Webhosting are included with the Web Camera options.

- 3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - PoE Connection Kit
- 2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - PoE Connection Kit
- 3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - 5.8 GHz Wireless Connection Kit
- 2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - 5.8 GHz Wireless Connection Kit
- 3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit
- 2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit
- 3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit - Lightning Zone
- 2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit - Lightning Zone

Video Services:

Contractor uses high definition video equipment to document "As Delivered" construction events.

Documentation comprises of Video recordings of dynamic events during the construction process. This deliverable may include but not limited to owner or process training videos, specific milestones or events and inspections. The deliverable includes post production editing. The final deliverable will be on a DVD or hard drive format and is not hosted on the Contractor's Multivista website or server.

Additional Items

Contractor will accommodate, without charge, limited additional items that may be captured during our scheduled visits and included in the Slideshow section of our service. Additional items requested which are of significant scope, may be ordered separately.

Miscellaneous

- 1) **SERVICES:** Contractor shall provide professional services in accordance with the Order. Contractor will begin a Project Set-Up only after receipt of electronic plans from the architect of the Project in an acceptable format. Thereafter, Contractor requires at least ten (10) business days for Project Set-Up *prior to the first shoot* contemplated by the Order.
- 2) **DETAILED PHOTO SETS:** Because of the volatile nature of construction schedules, IT IS THE SOLE RESPONSIBILITY OF THE ORDERING ACTIVITY TO PROVIDE CONTRACTOR AT LEAST 24 HOURS NOTICE PRIOR TO THE TIME THAT A DETAILED SET MUST BE PERFORMED. To the extent look-ahead schedules are made available to Contractor, Contractor will endeavor to communicate with the Project owner's representative or superintendent regarding upcoming Detailed Set shoots. However, Contractor will not be responsible if such Detailed Sets are not performed due to lack of notice pursuant to this provision.
- 3) **AGENT/OWNER'S REPRESENTATIVE:** Ordering Activity must designate a specific person or persons authorized to and responsible for scheduling site visits and Detailed Shoots.
- 4) **STANDARD OF CARE:** Services provided by Contractor under this Attachment A will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar

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circumstances. Contractor makes no warranties or guarantees, either expressed or implied, of the fitness of its documentation for any particular use.

- 5) OWNERSHIP OF DOCUMENTS: Contractor makes no warrants as to the professional nature of the photograph other than to capture the construction progress. Notwithstanding the foregoing, the underlying proprietary software, processes, procedures and all other proprietary information used to create these instruments of service, including all intellectual property rights associated therewith, shall at all time remain the sole property of Contractor and/or its suppliers.
- 6) SITE VISITS/OBSERVATION: Contractor shall visit the project and/or construction site at appropriate intervals and take photos of the construction progress. Visits to the project site and observations made by Contractor as part of services provided during construction under this Attachment A shall not make Contractor responsible for monitoring of the work. Contractor employees will report to the site office prior to working on site. The site superintendent shall be the designated person granting permission onto the site in order to ensure safe access for Contractor employees.

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NEC Corporation of America
9140 Guilford Road
Columbia, MD 21046

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NEC CORPORATION OF AMERICA ("NEC")

NEC CORPORATION OF AMERICA LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

1.01 "CPU" means a central processing unit in the System or SubSystem.

1.02 "Computer Program" means any instruction or instructions in object-code format for controlling the operation of a CPU.

1.03 "Licensed Product" means:

a: The Computer Program furnished hereunder to the Ordering Activity (herein also referred to as "LICENSEE").

b: The Computer Program manuals, documentation and any other material for the licensed Computer Program.

c: (i) "PBX" as used herein shall mean hardware PRODUCTS. (ii) "PBX Applications" as used herein shall mean computer software which executes in conjunction with the PBX hardware PRODUCTS utilizing external interfaces and include the following applications.

- Global Navigator
- Unified Communications for Business (UCB)
- Unified Communications for Enterprise (UCE)
- UM Products (UM8700, UM4730, UM8500, UM8000)

d: (i) "ECP" as used herein shall mean UNIVERGE® SV7000, UNIVERGE® SV8500 and NEC Spherical® hardware PRODUCTS.

(ii) "Applications" as used herein shall mean PBX Applications as defined in Section 1.03 (c) above.

THE TERM "LICENSED PRODUCT" DOES NOT MEAN OR INCLUDE THE SOURCE CODE FORMAT FOR THE COMPUTER PROGRAM.

2. GRANT OF RIGHTS

2.01 Contractor hereby grants the LICENSEE, and the LICENSEE hereby accepts, a personal, non-transferable and non-exclusive right to use the Licensed Product on 1 CPU at a time, or a single system where multiple CPU's are provided in the configuration, solely for its internal business purposes. The LICENSEE understands that the Licensed Product furnished to the LICENSEE is furnished solely for use in conjunction with the related hardware Licensed PRODUCTS sold by Contractor to LICENSEE. The LICENSEE has no right to use the Licensed Product so furnished on any CPU other than that such CPU or for any purpose not specified herein.

2.02 LICENSEE and Contractor expressly acknowledge and agree that NEC and/or NEC's licensors retain ownership of and title to their respective portions of the License Product and no right, title or interest to the intellectual property in the Licensed Product is hereby transferred to the LICENSEE or Contractor, except as expressly granted herein.

2.03 The LICENSEE shall not transfer possession of the Licensed Product, nor any rights conferred herein to any third party, except to a third party who acquires title to the LICENSEE'S related hardware Licensed PRODUCTS, provided such transferee has executed and provided to NEC, a signed copy of this Attachment A and has tendered to NEC, the then-current license transfer fee.

2.04 LICENSEE hereby agrees that it shall not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Product, except to the extent that such modification capability is an intended feature of the Licensed Product.

3. LIMITED WARRANTY AND REMEDIES

3.01 a: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the PBX and the UNIVERGE® SV8500 hardware will substantially conform to published performance specifications applicable as of the date of this

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Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

b: For a period of 120 days from date of shipping to LICENSEE's site, Contractor warrants that the UNIVERGE SV8500 software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

c: For a period of 90 days from date of shipping to the LICENSEE's site, Contractor warrants that the Applications software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

d: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV7000 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

e: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the NEC Spherical® PRODUCTS software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

f: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV8500 hardware and the NEC Spherical® hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

g: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the Unified Communications Enterprise (UCE), Unified Communications Business (UCB), CallCenterWorX and Global Navigator software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

h: For a period of 180 days from date of shipping to the LICENSEE's, Contractor warrants that the Unified Messaging (UM8700, UM4730, UM8500, UM8000) software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

3.02 Contractor's liability for any Licensed Product which is shown to be defective during its warranty period is limited to:

- a: replacing the Licensed Product or part thereof with a functionally equivalent Licensed Product or part,
- b: repairing the Licensed Product, or
- c: issuing credit for the depreciated value of the Licensed Product

The choice of which of the above warranty remedies to utilize concerning any particular Licensed Product shall be Contractor's.

3.03 In the event that any Licensed Product is shown to be defective during the warranty period, the LICENSEE, who purchased or leased such Licensed PRODUCTS, shall:

- a: notify Contractor promptly in writing of any claims,
- b: provide Contractor and/or NEC, with an opportunity to inspect and test the Licensed PRODUCTS claimed to be defective, and
- c: (if repair or replacement of the Licensed Product is selected) return the Licensed Product to Contractor or NEC, in accordance with instructions provided.

3.04 The above warranty excludes coverage for Licensed PRODUCTS which were installed, repaired or maintained by an unauthorized service provider or which were subjected to misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (including, but not limited to, lightning or water damage), storage, transportation or handling, unless caused by NEC or its authorized representative.

3.05 THE LICENSED PRODUCT WARRANTY CONTAINED IN THIS ATTACHMENT A IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SOFTWARE PRODUCTS.

4. TERMINATION

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4.01 Upon termination, the LICENSEE shall immediately discontinue the use of the Licensed Product and shall return all copies of the Licensed Product to Contractor.

5. REGISTRATION AND ACTIVATION

5.01 PRODUCT LICENSES delivered through the electronic licensing portals offered by NEC will be required to be registered and activated prior to the licenses being used or technical support being provided.

5.02 At the time of LICENSE registration, the Contractor is required to provide NEC with accurate LICENSEE contact information.

NetApp, Inc.
495 E Java Dr.
Sunnyvale, CA 94089

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

NETAPP, INC.

NETAPP, INC. LICENSE, WARRANTY AND SUPPORT TERMS

END USER LICENSE AGREEMENT

This end user license agreement ("Agreement") is a contractual agreement between the GSA Customer ("You" or "Your") and NetApp ("NetApp"), and provides the terms under which NetApp licenses its i) software, including where relevant, backup and recovery, disaster recovery, storage efficiency and management software, operating systems, protocols, updates and upgrades ("Software"), and ii) technical documentation describing the Software ("Documentation") to You, whether supplied by NetApp, Your NetApp distributor, reseller or partner. Any support is provided under a separate agreement.

- 1. Acceptance.** You agree that this Agreement will exclusively govern NetApp's license and Your use of the Software and Documentation unless You have a separate applicable written agreement with NetApp which governs NetApp's license and Your use of the Software and Documentation.

If You are accepting this Agreement on behalf of an U.S. Government agency or instrumentality (whether as an employee, contractor, , agent or otherwise), You represent and warrant that You have full authority to bind it. If You do not agree to the above, do not download, install, copy, access, or use the Software and Documentation , and promptly return the Software and Documentation to the party from whom it was obtained.

- 2. License Grant.** Subject to the terms of this Agreement, NetApp grants to You a , non-exclusive, worldwide, limited and terminable license, without the right to sublicense, to i) install and use the Software (in object code form) for Your internal purposes, and ii) use the Documentation in support of Your use of the Software. The Software may either be licensed for use with i) a specific storage controller identified by a unique serial number ("Controller-based licenses"), or ii) independent of a storage controller ("Standalone licenses"). Software is licensed in accordance with one of the following license types:
- a) "Life-of-controller licenses": Controller-based licenses granted for the period of time during which Your controller is operable;
 - b) "Perpetual licenses": Standalone licenses granted in perpetuity;
 - c) "Term licenses": Controller-based licenses or Standalone licenses granted for a fixed period of time;
 - d) "Capacity licenses": Controller-based licenses or Standalone licenses granted for a specified amount of storage capacity or usage; and
 - e) "Subscription licenses": Term licenses or Capacity licenses which may be purchased on a periodic basis.

Certain license types may require the installation and use of AutoSupport™.

Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair or group. Subject to NetApp's prior written agreement, and in the context of non-disruptive operations within a cluster, You may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

Use of the Software outside of the scope of this Agreement constitutes a material breach and You agree to execute a new or modified GSA Customer Purchase Order and promptly pay to NetApp any additional license fees contained therein , calculated in accordance with NetApp's GSA SchedulePrice List.

- 3. License Restrictions.** Except as otherwise expressly licensed to You, You shall not, nor shall You allow any third party to:

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- a) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable federal law or as expressly permitted in open-source licenses;
- b) remove or conceal any product identification, copyright, proprietary, patent or other notices in the Software and Documentation;
- c) assign or otherwise transfer, in whole or in part, the Software and Documentation licenses to another party or Controller-based licenses to a different storage controller;
- d) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar environment;
- e) modify, adapt or create a derivative work of the Software and Documentation; and
- f) publish or provide any Software benchmark or comparison test results.

4. Intellectual Property Rights And Protection. The Software and Documentation is licensed, not sold, to You. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo or trade name, of NetApp or its licensors is granted to You.

NetApp will defend You against claims brought by a third party alleging that the Software infringes any patent, trademark or copyright ("IP Claim") and indemnify You for a settlement amount or the judgment amount finally awarded for such IP Claim (collectively, "Damages") provided that You have:

- a) promptly notified NetApp in writing of the IP Claim;
- b) provided information and assistance to NetApp.

The GSA Customer affords NetApp the opportunity to intervene in any litigation, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

NetApp has no liability for claims that arise from:

- a) unauthorized modification or use of the Software by You or a third party;
- b) combination, operation, or use of the Software with any products not provided by NetApp;
- c) services offered by You or revenues earned by You for such services;
- d) NetApp's compliance with or use of designs, specifications, instructions or technical information provided by You or a third party on Your behalf; or
- e) Your failure to install an upgrade, new version, change or modification made available or requested by NetApp.

NetApp may, at its discretion:

- a) substitute the Software with a functional equivalent in all material respects;
- b) modify the Software so long as it remains a functional equivalent in all material respects;
- c) work with the Government to obtain for You, at NetApp's expense, the right to continue use of the Software; or
- d) take back such Software and refund to You the purchase price paid for it, less depreciation As provided for in U.S. Department of Treasury regulations.

NetApp's cumulative aggregate liability arising under this section 4 will not exceed USD\$500,000. To the extent permitted by applicable federal laws, this section 4 sets out Your exclusive remedies for any IP Claim. Nothing contained in the this Section 4 shall be

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construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to 28 U.S.C. § 516.

5. Direct Warranty. NetApp warrants to You that for a period of ninety (90) days from the date of first delivery of the Software to You, or such other minimum periods under applicable federal laws, (the "Software Warranty Period"), for the initially-shipped version of such Software, that i) the Software will materially conform to the then-current Documentation in effect on the date of Software delivery, and ii) the media containing the Software will be free from physical defects. NetApp does not warrant that Your use of the Software will be error-free or uninterrupted. In the event of any material defect in the Software during the Software Warranty Period, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the purchase price paid by You for the non-conforming Software. This warranty covers only material defects in the Software that are reproducible and verifiable and does not cover software, other items, or any services provided by persons other than NetApp or a NetApp distributor, reseller or partner. The Software warranty will be void if You or any third parties misuse, neglect, improperly install or test, attempt to repair or modify (except as authorized by NetApp in writing), or use the Software beyond the range of the intended use. TO THE EXTENT PERMITTED BY APPLICABLE FEDERAL LAWS, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND NO OTHER WARRANTY OR REMEDY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

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6. **Limitation of Liability.** Except for claims arising under section 4 above, and regardless of the basis of the claim (e.g. contract, tort or statute), the total liability of NetApp and its licensors, under or in connection with this Agreement, shall not exceed the amount actually received by NetApp for the Software or the minimum amounts permitted by applicable laws. NetApp and its licensors are not liable for:

- a) any indirect, incidental, exemplary, special or consequential damages;
- b) loss or corruption of data;
- c) loss of revenues, profits, goodwill or anticipated savings;
- d) procurement of substitute goods and/or services; or
- e) interruption to business; even if it has been advised of the possibility of such claims or damages.

The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by NetApp's negligence; (2) for fraud; (3) for express remedies under law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

7. **Audit.** You grant NetApp and its independent accountants the right to examine Your Software usage once annually during regular business hours upon reasonable notice to verify compliance with this Agreement. If the audit discloses material non-compliance, Subject to Government security requirements. NetApp will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement. Following any non-compliance, you may be subjected to more frequent audits.

8. **Termination.** This Agreement is effective until terminated. Termination shall be governed by applicable Federal Acquisition Regulations, the underlying GSA schedule contract and/or the terms of any applicable GSA Customer Purchase Order. When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, all rights to use the Software and Documentation cease and You shall, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Your possession or under Your control. Sections 1, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14 and 15 shall survive termination of this Agreement.

9. RESERVED

10. **U.S. Government Regulations.** Software and Documentation license rights granted to governments and other public sector entities include the rights stated herein and customarily provided to commercial end-user customers. In particular, NetApp provides the licenses for Software and Documentation in this Agreement to the U.S. federal government pursuant to FAR 12.211 (Technical Data) and 12.212 (Computer Software), FAR 52.227-14 "Rights in Data" (Dec. 2007) and for the Department of Defense pursuant to DFARS 252.227-7015 (Technical Data – Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

Some Software components have been designed to enable compliance with 'non-rewriteable and non-erasable' US government regulations. When enabled, they i) will preserve data in a non-rewriteable and non-erasable format, ii) may disable other Software restoration functionality, and iii) could limit support and recovery procedures, if relevant. You will ensure that Your internal processes and systems, including but not limited to the use of the Software, comply with all applicable "non-rewriteable and non-erasable" US government regulations. NetApp fully disclaims any associated liability.

11. **Export Control Laws And Regulations.** The Software and Documentation is subject to applicable export control laws and regulations of the United States and You agree to comply with them. You represent and warrant that You:
- a) will not, directly or indirectly, export or re-export the Software and Documentation to, or use the Software and Documentation in, countries subject to U.S. embargoes or trade sanctions programs, unless authorized by U.S. export licenses or other government authorizations;
 - b) will comply with any updates and revisions that the U.S. Government makes to the sanctions, embargoes and the countries specified in section 11(a) above;
 - c) are not a party, nor will you export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and
 - d) will not use the Software and Documentation for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical, biological weaponry or other weapons of mass destruction.
12. **Data Privacy.** You have sole responsibility for personal data managed or stored using the Software and agree to comply with all applicable data privacy laws.
13. **Financed Software.** This Agreement also applies to "Financed Software," which means Software and Documentation licensed to You for a limited period of use pursuant to the terms of a financing agreement between You and NetApp or its authorized third party financing partner (an "Approved Financing Agreement"), subject to the following:

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- a) The particular Financed Software, period of use, installation site and other transaction-specific conditions shall be as agreed in the applicable Approved Financing Agreement; and
- b) Notwithstanding any contrary terms in this Agreement, all licenses for Financed Software terminate at the expiration of the term of the Approved Financing Agreement or when sooner terminated by NetApp (whether in accordance with this Agreement or the Approved Financing Agreement).

You agree that the license granted under section 2 above and NetApp's termination rights under section 8 above may be affected by an authorized third party financing partner's rights under the applicable Approved Financing Agreement, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software.

- 14. Evaluation Software.** Subject to the terms of this Agreement, as amended by this section 14, NetApp may grant to You evaluation licenses for the Software and Documentation at no cost for a ninety (90) days period from the initial delivery of the Software to You, Your NetApp distributor, reseller or partner, whichever is the earlier, or such other period as agreed by NetApp in writing. Such licenses may only be used in a non-production environment to assess the suitability of the Software and Documentation for Your needs. Notwithstanding section 5 above, the evaluation Software and Documentation is licensed to You on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable federal law..
- 15. General.** This Agreement shall be construed pursuant to the laws of the United States of America notwithstanding any conflict of law provisions. The GSA Customer affords NetApp the opportunity to intervene in any litigation that arises from Your use of the Software and Documentation, at its own expense, through counsel of its choosing. Nothing contained in the this Section 15 shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to 28 USC 516. NetApp does not waive any of its rights under this Agreement by failing to or delaying the exercise of its rights or partially exercising its rights at any time. To the extent that any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. This Agreement may not be changed except by an amendment accepted by an authorized representative of each party. In the event of a dispute between the English and non-English versions of this Agreement (where translated for local requirements), the English version of this Agreement shall govern. This Agreement, the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders represent the entire agreement and understanding between NetApp and You with respect to the Software and Documentation and supersede any previous communications, representations or agreements between NetApp and You. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order which is signed by both parties.

NetScout Systems, Inc.
310 Littleton Road
Westford, MA 01886

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

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

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- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NETSCOUT SYSTEMS, INC.

NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in Section 8.

"Hardware" means hardware products generally available on the schedule price list.

"Maintenance" means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

"Pre-Released Products" shall have the meaning set forth below in Section 8.

"Product" means Software and Hardware provided by Contractor through NetScout.

"Quotation" means the document under which Contractor offers for sale and license its Products, Maintenance, and associated services.

"Service Provider" means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

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"Software Development Kit" or "SDK" means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in Section 8.

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

"You" or "Your" means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You.

Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to:

- i. copy or reproduce any part of the Software or Documentation, except as permitted above;
- ii. transfer the Software without Contractor's prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies;
- iii. sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or
- iv. modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event You are purchasing an Enterprise License and if You use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) Contractor will not warrant the performance or results obtained by using the Enterprise License Software and Contractor disclaims all liability with respect to the foregoing, (ii) You assume the risk as to the results and performance of the Enterprise License Software, and (iii) Your rights and Contractor's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Contractor that all of the foregoing have been destroyed.

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4. Limited Warranty. Contractor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("Media Warranty Period"). Contractor warrants that the Software for a period of 90 days ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in either case from its original date of shipment or when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor's return process.

5. Warranty Limit. The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor's reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that Products are appropriate for Your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. U.S. Government Restricted Rights. All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. Additional Terms and Limitations for Unsupported Products.

(a) Evaluation Products. Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) Pre-Released Product. Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has not promised or guaranteed to You that the Pre-Released Product will be announced or made available to anyone in the future; (ii) Contractor has no express or implied obligation to You to announce or introduce the Pre-Released Product; and (iii) You understand that Contractor may not introduce a

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product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. If You have been provided the Pre-Released Product pursuant to a separate written agreement, Your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, You agree to return or destroy all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) APIs. Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(d) Unsupported Products. If the product You have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively "Unsupported Products"), then You acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict Your access to parts or all of Pre-Released and SDK Products. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor may develop software programs substantially similar or identical to those developed by You through Your use of the SDK and reserves the right to sell and distribute those software programs.

9. Product Returns. Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre-Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES

1. **Maintenance Descriptions.** Contractor through NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions. Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the Hardware Coverage Period.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services includes: 24x7 access to technical support engineers; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the Coverage Period; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout's user forum conference; and registered access to the MasterCare portal. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf.

B. **Gold Support.** Subject to the terms herein and for existing Ordering Activities who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare

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newsletter; and registered access to the MasterCare portal. 72-hour return repair on Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.

C. Supplemental Maintenance Offerings. Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

➤ OnSite Engineer Services. Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: (i) installation of operating system and Software upgrades; (ii) Hardware maintenance, Software patches, and service pack installation, and (iii) oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Ordering Activity holidays and paid time off, provided the number of Ordering Activity holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. For a maximum period of two weeks during the initial term and renewal terms, the onsite engineer will not be at Ordering Activity's designated site performing the OSE Services due to training at NetScout's corporate headquarters.

➤ Remote Site Engineer Services. Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

➤ Technical Account Manager Services. Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing weekly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity's NetScout environment; providing monthly NetScout server "health checks" to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

2. Term and Renewal. Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 12 months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product.

3. Continuing Availability. If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

4. Substitutions; Software Updates. Contractor through NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

5. Warranty. Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity's remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

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6. **Limitations and Exclusions.** Contractor through NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of Ordering Activity or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current GSA price.

7. **Repairs.** A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, Ordering Activity must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

8. **Ordering Activity Obligations.**

A. **Access to Products.** Ordering Activity will grant the Contractor through NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally during any OSE Services term, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products ("Office Area"), and (ii) designate an employee of Ordering Activity to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

B. **MasterCare Support Coverage for Products.** OSE, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of Ordering Activity.

New Net Technologies, LLC
9128 Strada Place
Naples, FL 34108

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
12. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
New Net Technologies, LLC

New Net Technologies, LLC LICENSE, WARRANTY AND SUPPORT TERMS

Northrop Grumman Systems Corporation
7575 Colshire Drive
McLean, VA 22102

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

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

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

NORTHROP GRUMMAN SYSTEMS CORPORATION

NORTHROP GRUMMAN LICENSE, WARRANTY AND SUPPORT TERMS

This License Agreement ("Agreement") is made and entered into and effective as of the last signature below (the "Effective Date") by and between Northrop Grumman Systems Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America, by and through its Information Systems Sector, Civil Division with offices at _____ (hereinafter referred to as "Licensor") and the United States of America ("Government"), acting through _____, with offices at _____ (hereinafter referred to as "Licensee") either or both of which may be referred to as "Party" or "Parties".

1. Commercial Items. The software and documentation provided hereunder are "Commercial Items" as defined by Federal Acquisition Regulation ("FAR") 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

2. Grant of License. Licensor hereby grants to Licensee for the term identified in Schedule A, non-exclusive, non-transferable and personal, irrevocable, indivisible right and license to use the licensed subject matter (software and documentation) specified in Schedule A in accordance with the terms and conditions of this Agreement. Licensee shall use the licensed subject matter solely as installed in sites listed in Schedule A on the number of workstations for which Licensee has paid a license fee. Licensee shall not decompile, disassemble, or otherwise reverse engineer the licensed software. The right to revise, modify or enhance the licensed software is expressly prohibited. All terms and conditions of this Agreement are material terms of the license granted by this Agreement.

2. Permitted Use. The Permitted Use is set forth in Schedule A and has the meaning set forth below.

Named Users: The number of users is limited to those for whom Licensee has paid a license fee in accordance with Schedule A. For purposes of this Agreement, a "Named User" is a person who has usage rights to the software. Named users who directly or indirectly use the Software must be counted towards the number of named users for whom Licensee has paid a license fee. Further, each person accessing the software's functionality is a user of the software, whether or not using software components to access the software's functionality, and must be counted towards the number of authorized named users.

Concurrent Users: The number of users is limited to those for whom Licensee has paid a license fee in accordance with Schedule A. For purposes of this Agreement, a "Concurrent User" is any person recognized by the Licensee who has usage rights to the software. Users who directly or indirectly use the Software must be counted towards the number of concurrent users for whom Licensee has paid a license fee. Further, each person accessing the software's functionality is a user of the software, whether or not using software components to access the software's functionality, and must be counted towards the number of authorized concurrent users who may use the Software at the same time without regard to the number of different "registered" or "named" users. Each concurrent user may make unlimited use of Software from any computers or devices at any locations worldwide.

Core-Based Server License: The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with Schedule A for each such license. For purposes of this Agreement, an unlimited (until Core capacity is reached) number of authorized users may use the software, provided that the total number of Cores residing on all computers where the software is installed does not exceed the permitted number of Cores identified on Schedule A. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward the total number of Cores licensed. "Core" means the processor or execution core contained in the same integrated circuit within a computer's central processing unit, whether such Cores are virtual or physical. Licensee may not permit any unauthorized third party to access or to use the software. Licensee may not use the Software in the operation of a service bureau, commercial time sharing or in any other resale capacity.

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3. **Proprietary Rights.** Licensee acknowledges that the licensed software contains valuable trade secrets of the Licensor. Licensee shall not assign, license, disclose or otherwise transfer the licensed software or any copy thereof without the written consent of Licensor. All copyright, patent, trade secret, confidential information and other intellectual and proprietary rights in the licensed software are and shall remain the valuable property of Licensor. Title to the licensed subject matter and all rights therein, including rights in patents, trade secrets and copyrights shall remain vested in Licensor.

4. **Copies.** Licensee may make copies of the licensed software solely for archival and backup purposes. All archival and backup copies of the software are subject to the provisions of this Agreement. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies. Except as provided in this section, Licensee may not copy the licensed subject matter (software and documentation) in whole or in part, for any purpose. Licensee agrees not to extract ideas, algorithms or procedures from the licensed subject matter (software and documentation) for any purpose, including without limitation, for the purpose of creating any works that are intended to be used as a substitute for the software or to be used by or for a third party.

5. **Export.** Licensee agrees to comply with all applicable export laws and regulations including those of the United States of America (US). Licensee shall not export, re-export or transmit, directly or indirectly, the licensed subject matter or any part thereof to any country for which US Export Administration Regulations or US International Traffic in Arms Regulations require prior authorization unless such prior authorization is obtained.

6. **Confidentiality.** The licensed subject matter, including the design and elements of the database tables, as well as any information that is marked confidential and those rights designated proprietary in Section 3, is confidential information, the disclosure of which would harm Licensor. Licensee agrees, to the full extent permitted by law: (i) to hold the confidential information in strict confidence; (ii) not to disclose any confidential information to any third party unless authorized in writing by Licensor; (iii) not to disclose any confidential information to any third party unless required by law or court order; and (iv) to use the confidential information solely in accordance with the terms of this Agreement.

7. **Warranty.** Licensor warrants for a period of thirty (30) days that the licensed software will substantially conform to the applicable technical specifications for the Software that is published in the documentation supplied to Customer. Except as expressly stated in the foregoing, Licensor furnishes the licensed subject matter, and Licensee agrees to accept same, on a strictly "as is" basis. Licensor makes no representations, warranties, guarantees, affirmations or obligations as to the uses, suitability, performance, capabilities, reliability or accuracy of the licensed subject matter for use in any fashion by Licensee. **Licensor expressly disclaims any warranty of merchantability and warranty of fitness for a particular purpose.** Notwithstanding the foregoing, Licensor agrees to repair defects in the licensed software for a period of ninety (90) days from delivery of the licensed software. Licensor does not warrant that the operation of the licensed software will be uninterrupted or error-free.

8. **Limitation of Liability.** Licensor shall have no liability to Licensee for any loss, claim, remedy, suit, action, damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee or third party bodily injury, or property damage based on products liability, strict liability, or negligence concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed subject matter. Licensor shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages arising out of or in connection with the license granted under this or any business activity of Licensee. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. **Services.** The license fees do not include any maintenance, online help, implementation support or other support services. The Parties will enter into a separate software maintenance agreement. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely as set forth in that agreement. Under a separate agreement, Licensor will make training available to Licensee pursuant to Licensor's standard training procedures, at Licensor's standard rates at a location to be mutually determined by the Parties. Licensee shall limit use of the licensed software to its employees who have been appropriately trained.

10. **Governing Law.** Any allegation that the Licensor has breached this Agreement shall be governed by the Contract Disputes Act, 41 U.S.C. § 7101 et seq. Any dispute under this License may be resolved only in a forum expressly authorized by federal law for that dispute. The statute of limitations for, and the resolution of, such disputes will be governed by applicable federal law.

11. **General.** This Agreement may be modified or amended solely in writing by both Parties. The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this Agreement or any of the rights granted therein without the prior written consent of Licensor. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive termination of this Agreement. This Agreement is separate and distinct from any services associated with the software delivered hereunder.

SCHEDULE A

The Licensed Subject Matter consists of the following:

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A. Licensed Software.

Product	License Term	Permitted Use License Metric	License Quantity

B. Licensed Documentation.

Document

C. License Fee. The License Fee of \$_____ is payable upon the Effective Date of this Agreement.

D. Delivery. Licensor shall deliver the licensed subject matter electronically within thirty (30) days of the Effective Date of this Agreement.

E. Terms and Conditions. The terms and conditions applicable to term software licenses (special item number 132-32), perpetual software license (special item number 132-33) and maintenance as a service (Special item number 132-34) of general purpose commercial information technology software per GSA Schedule GS-35F-0511T.

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any

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because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NOWSECURE

NOWSECURE LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITION OF TERMS

"Account" means a set of data and Users representing an individual, company or organization with a common billing address, and common Subscription or Subscriptions.

"Account Owner" means the first User, unless subsequently changed through Account management interface, which is responsible for assigning Account roles, inviting additional Users, Subscription and billing management, payment, and Account terminations.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

"Control" means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

"Agreement" means this Subscription Agreement.

"Anonymized Data" means information or data that is anonymized, aggregated or de-identified and/or compiled on a generic basis and which does not name or identify a Client, specific individual or natural person, whether derived from Client Data as defined below, access or usage patterns, or another source.

"Client", "You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Client Data" means all data that is provided to the Services by or on behalf of Client or End Users for the purpose of access, storage, analysis or processing by the Services, including without limitation Personal Information;

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible at nowsecure.com or subdomains of nowsecure.com, within the Software or by login to the applicable Service.

"Evaluation" Any Subscription labeled as evaluation, trial, no cost use, or free plan.

"Harmful Content" means code, files, scripts, or programs intended to deceive, disrupt or do harm to Us or other users of the Services, including, for example, viruses, worms, time bombs and Trojans.

"Other Applications" means a Web-based or offline software application not provided by Us that interoperates with any Service or Software.

"Order Form" means an ordering document, schedule, or similar instrument specifying the Services to be provided hereunder, whether for payment or Evaluation, that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Personal Information" means Client Data that names or identifies a natural person including non-public personal data, such as passport number, social security number, driver's license number; financial account numbers; or sensitive personal data, when personally identifiable. Personal Information shall not include Anonymized Data.

"Services" means the services that are ordered by You under an Order Form and made available by Us, including associated Software components and Documentation.

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“Software” means the software made accessible to You as part of the respective Services, including mobile, web or desktop software as applicable;

“Subscription” means a specific period and level of Services, requiring payment of specified fees or provided at no cost, purchased or accepted by You by means of Order Form(s), whether electronic or written.

“User” or **“End User”** means an individual who is authorized by You to use a Service pursuant to a valid Order Form and this Agreement, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

“NowSecure”, “We,” “Us” or “Our” means NowSecure, Inc., a Delaware Corporation.

2. ACCEPTANCE MEANS AND ENTITY

2.1. RESERVED.

2.2. RESERVED.

2.3. PROHIBITED ACCESS. YOU MAY ACCESS THE SERVICES SOLELY FOR YOUR OWN LAWFUL BUSINESS OR PERSONAL USE AND YOU MAY NOT ACCESS THE SERVICES FOR COMPETITIVE ANALYSIS OR MONITORING THE AVAILABILITY OF THE SERVICE OR MEASURING ITS PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARK OR ASSESSMENT PURPOSE, WITHOUT PRIOR WRITTEN CONSENT FROM US. ANY PARTY OFFERING A COMPETITIVE PRODUCT OR SERVICE MAY NOT ACCESS THE SERVICES FOR ANY REASON.

3. ACCESS AND USE GRANT; RESTRICTIONS

3.1. Access Grant. Subject to the terms of this Agreement and applicable ordering document, We grant You a limited, non-transferable, non-exclusive license to use the Services during the Term detailed in the applicable ordering document, solely for Your own internal business purposes in accordance with the applicable Terms of Use.

3.2. Limitations. The rights granted hereunder are limited and the Services may only be accessed and used: (a) in the Territory as detailed in the relevant Order Form; (b) in accordance with the functional description of the Service(s) in the Documentation, including the relevant Order Form; and (c) in accordance with applicable Terms of Use for any related Software, including mobile application software, which is provided for use in connection with the Service.

3.3. Additional Use Restrictions. You may not use the Services outside the scope set out in this Agreement without Our prior written consent. You may not: (a) modify, alter, tamper with or make derivative works based upon the Services; (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services, except to the extent that applicable law specifically prohibits such restrictions; (c) access the Services in order to build a competitive product or service or copy any ideas, features, functions or graphics thereof; (d) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or access to the Services in any way; (e) copy or reproduce all or any part of the Services except as expressly permitted in this Agreement; or (f) access or use the Services in a way intended to avoid or exceed usage limits or quotas.

4. YOUR RESPONSIBILITIES

4.1. Client Software and Equipment. You are responsible for obtaining and maintaining all hardware, software and communications equipment necessary to access and use the Services and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Services. You acknowledge that minimum hardware, software, and communications requirements apply to use the Services.

4.2. Usage Limits. Unless otherwise provided in the applicable Order Form, the Services are purchased as time-limited Subscriptions and are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, a quantity in an Order Form refers to a specific number of End Users, and the Service or Content may not be accessed by more than that number of Users. If You exceed a contractual usage limit, You agree to reduce Your usage so that it conforms to the limit or execute an Order Form for additional quantities of the applicable Services promptly upon Our request, and pay any undisputed invoice for excess usage in accordance with payment terms in the applicable Order Form and this Agreement.

4.3. Actions of End Users. You are responsible for Your actions, including the actions of End Users, while using the Services, and for the contents of Your and their transmissions through the Services. You agree to ensure that You and all End Users

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will (a) abide by all Laws applicable to use of the Services; (b) not upload or distribute Harmful Content; (c) not interfere with or disrupt the Services, the data contained therein or the networks connected thereto; (d) not attempt to gain unauthorized access to the Services or its related systems or networks; and (e) notify Us immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

4.4. Reserved.

4.5. Reserved.

5. OUR RESPONSIBILITIES

- 5.1. Provision of Services.** We will make the Services available to You pursuant to this Agreement and the applicable Order Forms and Terms of Use. We may provide Services in association with Affiliates or contractors, in accordance with the terms of this Agreement, including Confidentiality provisions.
- 5.2. Protection of Your Data.** We will maintain administrative, logical and physical safeguards to protect the security, confidentiality and integrity of Client Data, as described in the Documentation. Safeguards will include measures designed to prevent unauthorized third-party access, as well as prevent access, use, or disclosure of Client Data by Our personnel except (a) in order to provide and improve the Services and prevent or resolve problems, and in accordance with the Confidentiality provisions in this Agreement and published Privacy Policy; (b) as compelled by law as described in this Agreement; or (c) as You expressly permit in writing.
- 5.3. Service Level.** Unless otherwise set forth in the Documentation or Relevant Order Form, we will use commercially reasonable efforts make the Services available 24 hours a day, 7 days a week, except for: (a) limited planned maintenance downtime, of which We shall give at least 8 hours advance electronic notice and which We shall schedule to the extent practicable during non-business hours; (b) Evaluation, no cost, or Beta Test limited license use; (c) use of specific features as a beta test participant; or (d) any unavailability caused by circumstances beyond Our reasonable control, such as Force Majeure, Internet service provider failure or delay, Network hosting provider failure or delay, or denial of service attack.
- 5.4. Support.** Unless otherwise set forth in the Documentation or Relevant Order Form, and with the exception of Evaluation, no cost, or Beta Test limited license use of the Services, we will provide Our standard support for the purchased Services to You as specified in the applicable Order Form. Unless otherwise specified on the applicable Order Form, standard support shall mean email-based support with next-business day response. For Evaluation, no cost, or Beta Test limited license use, unless otherwise set forth in writing to the contrary, support shall only be provided in Our sole discretion.
- 5.5. Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.
- 5.6. Modifications to the Services.** We may issue modifications to the Services from time to time according to Our development schedule ("Updates") for which We maintain exclusive control. We are under no obligation under this Agreement to provide any Updates to the Services.

6. PROPRIETARY RIGHTS AND LICENSES

- 6.1. Reservation of Rights.** We and Our licensors reserve all respective right, title and interest in and to the Services, including all related intellectual property rights, and including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights. We own all rights to any suggestions, ideas, enhancement requests, feedback, recommendations or similar information provided by You or any other party relating to the Services. No rights are granted to You hereunder other than as expressly set forth herein.
- 6.2. Reservation of Your Rights.** To the extent You upload code or other software as a part of this license and with respect to Your logo or trademarked intellectual property, You retain all right, title and interest to Your copyrights, trademarks, service marks, trade names and all other proprietary intellectual property (collectively "Client IP").
- 6.3. License Grant for Client Data and Client IP.** In order to enable provision of the Services, You grant Us a worldwide limited-term license to host, copy, process and display Client Data, subject to limitations of Confidentiality and the applicable Privacy Policy. This license is granted for the duration of any Subscription term, plus any retention period following termination of a Subscription term, which, under any circumstances shall not exceed one year. To the extent You choose to include Client IP in Client Data (for example, adding a logo to a personalized web page) You grant Us a similar worldwide limited-term license to host, copy, process and display such Client IP, only as necessary to provide You the Services.
- 6.4. License Grant for Anonymized Data.** You grant Us a perpetual, non-exclusive, worldwide right and license to retain, use, adapt, display, and distribute Anonymized Data, whether derived from Client Data or another source, without restriction. By definition, Anonymized Data excludes Personal Information.
- 6.5. Reserved.**
- 7. RESERVED.**
- 8. RESERVED.**

9. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

- 9.1. Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 9.2. Our Warranty.** With the exception of Evaluation, no cost, or Beta Test limited license use, We warrant that (a) this Agreement, relevant Order Forms, and the Documentation accurately describe the safeguards in place for protection of the security, confidentiality and integrity of Client Data, (b) the Services will function in all material respects as specified in the Documentation, and (c) We will not materially decrease the overall security of the Services during a Subscription term. Our Warranty does not apply to (a) improper use of the Service including any noncompliance by You or any End User with Section 5 hereof, (b) errors or problems in Your network or equipment (c) interruptions in Internet access or other downtime caused by network or third party services; or (d) problems caused by any breach by You of Your obligations under this Agreement.
- 9.3. Your Warranty.** You warrant that you have obtained all authorizations, consents and licenses necessary to fully perform this Agreement, to use the Services, to access Client Data provided thereto, and for Us to use the Client Data as permitted in this Agreement.
- 9.4. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE DO NOT WARRANT THAT THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, NOR THAT THE SERVICE WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGES AND AGREE THAT WE EXERCISE NO CONTROL OVER, AND ACCEPT NO RESPONSIBILITY FOR, YOUR COMPLIANCE WITH ANY LAW OR REGULATION APPLICABLE TO YOU OR YOUR END USERS. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- 9.5. No Warranty for High Risk Activities.** We specifically disclaim any express or implied warranty of fitness of the Services for usage where the use or failure of the Service could lead to death, personal injury or environmental damage ("High Risk Activities"), including for example the operation of nuclear or chemical processing facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems environments.

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10. RESERVED.

11. LIMITATION OF LIABILITY

11.1. Reserved.

11.2. Reserved.

11.3. Reserved.

11.4. Reserved.

11.5. **Amazon Web Services.** In connection with providing access to the Services and performing Our obligations hereunder, We use and rely upon certain cloud computing and web hosting services provided by Amazon Web Services, Inc. "AWS") pursuant to terms and conditions as approved by GSA.

12. RESERVED.

13. LAWS AND COMPLIANCE

13.1. **Data Privacy Laws.** You agree to comply with all applicable data protection and privacy Laws, including all Laws that govern Your provision of Personal Information to Us so that We may process such Personal Information as contemplated by this Agreement. We agree to comply with all data protection and privacy Laws that are applicable to Us in provision of the Services. To the extent that You have legal requirements that reasonably must be executed by Us, You agree to specify such requirements in a Security Schedule, and the parties will engage in good faith efforts to accommodate those requirements to the extent technically feasible.

13.2. **Third Party Requests.** We will respond to third party requests about Your Client Data or use of the Services by You or End Users, to the extent any response is required by applicable law. In order to facilitate resolution of these requests, We may pass them on to You or provide contact information for You to such third party. We will notify You of any such request compelling Us to provide Your Client Data to a third party, prior to providing such data, unless notification is legally prohibited or we have reasonable cause to believe such notification could cause harm.

14. RESERVED.

15. GENERAL PROVISIONS

15.1. Reserved.

15.2. Reserved.

15.3. Reserved.

15.4. Reserved.

15.5. Reserved.

15.6. **Federal Use.** In the event that the Software or Services under this Agreement can be construed as "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1), then, if access is acquired by or on behalf of a civilian agency, the US Government acquires this access to commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement and as specified in 48C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If access is acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this access to commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

15.7. Reserved.

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15.13. Reserved.

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15.14. Reserved.

15.15. Reserved.

Nutanix
1740 Technology Drive, Suite 150
San Jose, CA 95110
partnerhelp@nutanix.com

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

1. **Scope.** This Rider and the attached **Nutanix** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

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- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

PROPRIETARY AND CONFIDENTIAL

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

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

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

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



NUTANIX END USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY

READ THIS END USER LICENSE AGREEMENT (THE “AGREEMENT”) BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT, AND, IF YOU ARE ACCEPTING THESE

TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT:

- **DO NOT ORDER OR PURCHASE THE SOFTWARE**
- **DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN “ACCEPT” BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE**
- **DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT**

This Agreement is between You, on behalf of the company, partnership or business entity that You represent (“You” or “Your”) and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as “Nutanix”).

“Software” means any Nutanix software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to You as well as to any copies (whether complete or partial) made by or on Your behalf, including without limitation firmware. The term “Software” also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to You. “Documentation” means any on-line read me, help files, or other explanatory materials related to the Software.

This Agreement applies to all Software and Documentation made available by Nutanix to You.

1. License Grant and Entitlement. The Software and Documentation are licensed, not sold, to You by Nutanix. This Agreement confers no title or ownership and is not a sale of any rights in the Software. Subject to the terms and conditions of this Agreement, the terms of Your entitlement which evidences Your authorization to use the Software and the authorized scope of use of the Software (“Entitlement”), and payment of the purchase price and/or all fees, You are hereby granted a personal, limited, non-assignable, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one authorized Nutanix system during the period of the license and for internal business operations only (“Permitted Use”). The Entitlement shall be specified in writing on the order or equivalent document issued by Nutanix or the party from whom You have lawfully acquired the products. The Entitlement shall specify the name of the product, the number of Licensed Units and the usage level and feature set authorized. Your Permitted Use is limited to the number of Licensed Units stated in Your Entitlement. “Licensed Unit” means the unit of measure by which Your use of Software is licensed, as described in Your Entitlement. If You have multiple Licensed Units, You may install and use as many copies of the Software as You have Licensed Units, in each case, on an authorized Nutanix system and only as permitted herein. Use of the Software outside the scope of Your Entitlement is unauthorized and void the warranty and/or support obligations of which You may otherwise be entitled. You agree to use Your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to You. There are no implied licenses granted by Nutanix under this Agreement. Except as expressly specified above, You shall have no rights to the Software.

2. Use.

2.1 Limitations on Use. You must not use the Software or Documentation except as permitted by this Agreement. You must not:

- (a) alter, decompile, disassemble, modify, unbundle or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization;

- (b) port, emulate the functionality, reverse compile, reverse assemble, reverse engineer, create derivative works, or otherwise reduce to human readable form or attempt to separate any of the components of the Software or derive the source code for the Software;
- (c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
- (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation or any product in which the Software is embedded
- (e) disclose the results of testing, benchmarking or other performance or evaluation information related to the Software or the product to any third party without the prior written consent of Nutanix;
- (f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
- (g) use any "locked" or key restricted feature, function or capability without first purchasing the applicable license and obtaining a valid key, even if such feature, function or capability is enabled without a key; or
- (h) distribute any copy of the Software to any third party, including as may be embedded in equipment sold in the secondhand market.

You must not cause, encourage or permit any third party to do any of the foregoing.

If You believe that any of the foregoing restrictions are prohibited by Federal law, You agree to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, on such use of the Software, or offer to provide alternatives to ensure that Nutanix's proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix's proprietary rights.

2.2 Third Party Software. You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

3. **Open Source Components.** Software may use or include one or more of the open source software components listed in the Nutanix open source attribution file, which is available at www.nutanix.com/opensource. Please refer to the open source attribution file for the open source license disclosures and pertinent terms.
4. **Proprietary Rights.** You acknowledge and agree that the Software belongs to Nutanix or its licensors. You agree that You neither own nor hereby acquire any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property, including all modifications and derivative works of any of the foregoing. Nutanix and its licensors retain all right, title and interest both tangible and intangible in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Any and all other copies of the Software or Documentation made by You are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives You no rights to such content. All trademarks used in connection with the Software and Documentation are owned by Nutanix, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by You to Nutanix with respect to the Software shall be Nutanix's property and deemed Confidential Information of Nutanix. You hereby assign to Nutanix all right, title and interest in and to any feedback provided to Nutanix.
5. **Support.** Nutanix's support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at <http://www.nutanix.com/support/support-terms/>. Nutanix does not provide any product maintenance or support services under this Agreement. Product maintenance and support services, if any, will be provided under a separate agreement. This Agreement does not entitle You to any product updates at any time in the future.

6. **Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

7. **NO WARRANTY.** EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTY, WHICH MAY BE FOUND AT [AT EXHIBIT B \(ATTACHED\)](#) YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO YOU IN WHICH CASE NUTANIX'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Nutanix's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

8. **Infringement.** Subject to the remainder of this section, Nutanix shall defend or settle, at its own expense, any third-party action against You to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against You attributable to such claim, provided that You (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix control of the defense and/or settlement of such action to the extent permitted by 28 USC 516, (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Software may be used; (b) its compliance with Your specifically requested specifications; (c) use of software other than a current unaltered release of the Software or use of any older version of the Software when the use of a newer release of the Software made available to You would have avoided the infringement; (d) the combination, operation or use of the Software with non-Nutanix products or services; or (e) use of the Software in a manner for a purpose for which it was not intended. THIS SECTION SETS FORTH NUTANIX'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIMS OR ACTIONS RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

9. **Confidentiality.** "Confidential Information" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from

no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

10. Technical Information. You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.

11. Compliance with Laws; Export Control. Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

12. Governing Law. To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive Federal laws of the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

13. Miscellaneous. If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement, together with the terms of the GSA Schedule Contract, constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

14. User Outside the U.S. If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

EXHIBIT A - Support Terms & Conditions

1. **SUPPORT.** Customer is not entitled to support unless Customer has ordered and paid for Support as provided in the Order. Nutanix will use reasonable efforts to provide support services as described in these Support Terms and Conditions ("Support") at the level Customer has purchased (e.g., Basic, Production or Mission Critical) for the term Customer has purchased, which commences upon Product shipment. Nutanix's Support contact information is at www.nutanix.com/support. Support is contacted primarily through Nutanix's web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone and email support. Nutanix's Support obligation is limited to using reasonable efforts to remedy a reported failure of the Products to substantially operate in accordance with Nutanix's official specifications (a "problem"). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.
 - A. **SOFTWARE SUBSCRIPTION.** Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer's term of Support which may include bug fixes, patches releases, and major updates ("Releases"), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix's discretion. Any Releases may only be installed as an update to the Customer's original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the GSA Schedule Contract of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from <http://support.nutanix.com>. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.
 - B. **HARDWARE SUPPORT.** If Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time ("TDT"), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix's TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer's location is remote and/or if common carriers encounter delays or require special transportation arrangements reaching Customer's site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix's option. Defective parts must be returned to Nutanix. If Customer has purchased Nutanix no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement part with Customer's reasonable assistance.
 - C. **SOFTWARE SUPPORT.** Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer's production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product features are unavailable with no acceptable workaround, but Customer's production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer's production use is continuing; P4 —all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer's problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix's sole discretion), Nutanix will provide on-site technical support in Nutanix's discretion, and if so provided in Nutanix's discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer's problem was not caused by Nutanix Products and if the onsite Support was requested by Customer, then Nutanix may invoice Customer Nutanix's then-current daily time and materials rate under the GSA Schedule pricelist.
2. **EXCLUSIONS.** Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.
3. **CONDITIONS TO NUTANIX'S SUPPORT OBLIGATIONS.** Customer needs to do the following as a condition to Nutanix's provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer's only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer's site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix's automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended

replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer's systems data, information and other materials reasonably required by Nutanix for the Support ("Customer Materials"), the accuracy of which is Customer's responsibility. Subject to Customer's rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix's personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein;. Customer will have no other rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer's data in order to perform Nutanix obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.

4. **REINSTATEMENT OF SUPPORT.** If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix's certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days; (ii) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the period the Products were not covered by Support; and (iii) the Support fees for the annual period commencing upon the reinstatement of Support.
5. **NON-TRANSFERABILITY.** If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix's then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix's then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer's remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix's sole and absolute discretion.
6. **RELATIONSHIP OF THE PARTIES.** Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.
7. **ENGLISH.** All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et to Nutanix les documents connexes soient rédigés en anglais selon la volonté expresse des parties.
8. **CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at www.nutanix.com/support.

EXHIBIT B – LIMITED WARRANTY

1. **EQUIPMENT.** Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the "Hardware Warranty Period"). Nutanix's entire liability, and Customer's sole and exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. If Customer has purchased Nutanix's no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become

Nutanix's property. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at www.nutanix.com/support.

2. **REPLACEMENT PARTS.** All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.
3. **SOFTWARE.** Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix's official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix's entire liability, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.
4. **SERVICES.** Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix's entire obligation, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.
5. **EXCLUSIONS.** Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix's typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.
6. **WARRANTY DISCLAIMER.** EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF Limited Warranties Page 2 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.
7. **HAZARDOUS USE RESTRICTION.** THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION.
8. **CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at www.nutanix.com/support.

OpenGov, Inc.
955 Charter Street
Redwood City, CA 94063

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

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

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
- 3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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

OPENGOV, INC.

OPENGOV, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. SOFTWARE SERVICES

- 1.1 Subject to the terms and conditions of these OpenGov Terms and Conditions (the "Agreement"), OpenGov will use commercially reasonable efforts to perform the software services (the "Software Services") identified in the applicable Software Agreement entered into by OpenGov and Ordering Activity ("Software Agreement").
- 1.2 Ordering Activity understands that OpenGov's performance depends on Ordering Activity timely providing OpenGov with a copy of the Ordering Activity's chart of accounts in .csv or .xls format. In addition, Ordering Activity agrees to provide OpenGov with five or more years of general ledger data, also in .csv or .xls format, including budget data for the current year and actual expense and revenue data for past years. Any dates or time periods relevant to OpenGov's performance will be extended appropriately and equitably to reflect any delays caused by Ordering Activity's failure to timely deliver any such materials. OpenGov shall not be liable for any delays in performance under this Agreement resulting from Ordering Activity's failure to meet these obligations.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1 This is a contract for access to the Software Services and Ordering Activity agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software Services, documentation or data related to the Software Services, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Software Services; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Software Services; or remove any proprietary notices.
- 2.2 Ordering Activity will use the Software Services only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions).
- 2.3 Ordering Activity shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access or otherwise use the Software Services and Ordering Activity shall also be responsible for (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Ordering Activity user accounts with or without Ordering Activity's knowledge or consent.
- 3. **OWNERSHIP.** OpenGov retains all right, title, and interest in the Software Services and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein.

4. RESERVED.

- 5. **DATA LICENSE.** Ordering Activity grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information submitted by Ordering Activity to OpenGov for the development of new software or the provision of the Software Services.

6. RESERVED.

7. RESERVED.

8. WARRANTY AND DISCLAIMER

- 8.1 OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Software Services shall be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards.
- 8.2 Ordering Activity represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data provided to OpenGov for use in and in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) OpenGov's use of such materials in connection with the Software Services will not violate the rights of any third party.
- 8.3 OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
9. **RESERVED.**
10. **RESERVED.**

Palo Alto Networks, Inc.
3300 Olcott Street
Santa Clara, CA 95054

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

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

- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

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

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

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

PALO ALTO NETWORKS

PALO ALTO NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

PALO ALTO NETWORKS MAINTENANCE AND SUPPORT SERVICES ARE NOT GOVERNED BY THIS EULA, AND ARE GOVERNED BY A SEPARATE GLOBAL SUPPORT SERVICES TERMS AND CONDITIONS ("EUSA") DETAILED IN EXHIBIT A.

1. LICENSE GRANT AND RESTRICTIONS.

- 1.1 Software License Grant.** Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a nonexclusive license to: (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is solely for End User's internal business purposes unless otherwise agreed to with Palo Alto Networks in a separate written agreement. All other rights in the Software are expressly reserved by Palo Alto Networks.
- 1.2 Subscription Services Limited Right to Use.** Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User's internal business purposes.
- 1.3 License Restrictions.** End User shall maintain the Products in strict confidence and shall not: (a) except in accordance with Palo Alto Networks license transfer procedure (<https://www.paloaltonetworks.com/support/support-policies/secondary-marketpolicy.html>, for informational purposes only), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services Provider agreement), including, without, limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.
- 1.4 Affiliates.** If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that each such End User Affiliate complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where "Control" means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

2. OWNERSHIP.

The Software and Subscription Services are licensed, not sold. Palo Alto Networks retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent,

Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

3. RESERVED.

4. WARRANTY, EXCLUSIONS AND DISCLAIMERS.

4.1 Warranty. Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks' published specifications for three (3) months from the date of shipment. As End User's sole and exclusive remedy and

Palo Alto Networks' and its suppliers' liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not.

4.2 Exclusions. The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks' specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

4.3 Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS". PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER'S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

5. RESERVED.

6. RESERVED.

7. END USER DATA.

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally-identifiable, sensitive, and/or confidential data and information (collectively, "End User Data"). End User represents and warrants that End User's use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User's sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks. End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

8. GENERAL.

8.1 Reserved.

8.2 Reserved.

8.3 Reserved.

8.4 Reserved.

8.5 Reserved.

8.6 Reserved.

8.7 U.S. Government End Users. This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are “commercial computer software” and “commercial computer software documentation,” respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Software and its documentation shall be as specified in this EULA.

8.8 Open Source Software. The Products may contain or be provided with components subject to the terms and conditions of open source software licenses (“Open Source Software”). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/company/third-party-software.html>, for informational purposes only.

8.9 Reserved.

8.10 Authorization Codes, Grace Periods and Registration. Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment and sent to You via email. The service period will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html>, for informational purposes only. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

8.11 WildFire Related Microsoft Licenses. End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

8.12 Reserved.

GLOBAL CUSTOMER SUPPORT SERVICES TERMS AND CONDITIONS

1. SUPPORT PLANS AND SERVICES OFFERED

Support Offerings	4 Hour Premium Support	Premium Support	Standard Support
Office Hours Availability	See https://support.paloaltonetworks.com		
After Hours Availability	Yes - 24x7x365	Yes - 24x7x365	No
Hardware Support			
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)	Yes	No	No
Advance Replacement Service: Next Business Day Ship	No	Yes	No
Return and Repair	No	No	Yes
Call Response Times			
Severity 1 – Critical Product is down, critically effects customer production environment. No workaround yet available.	< 1 hour	< 1 hour	< 1 hour 7am – 6pm PST
Severity 2 – High Product is impaired, customer production up, but impacted. No workaround yet.	2 Business Hours	2 Business Hours	2 Business Hours
Severity 3 – Medium A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.	4 Business Hours	4 Business Hours	4 Business Hours
Severity 4 -- Low Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer.	8 Business Hours	8 Business Hours	8 Business Hours
Contacting Support			
Palo Alto Networks, Inc 4401 Great America Parkway Santa Clara, CA 95054	Toll Free US – 1.866.898.9087 Outside the US +1.408.738.7799 Website: support.paloaltonetworks.com		

2. DEFINITIONS

- a) **"Business Hours"** means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.
- b) **"Hardware"** means the appliance and server agent products listed on Palo Alto Networks' then-current published product price list.
- c) **"Major Releases"** means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- d) **"Minor Releases"** means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- e) **"Maintenance Releases"** means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- f) **"Palo Alto Networks Standard Support," "Palo Alto Networks Premium Support," and "Palo Alto Networks 4 Hour Premium Support"** refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.
- g) **"Palo Alto Networks Support Plans"** means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.
- h) **"Palo Alto Networks Support Web Site"** means the web site currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.
- i) **"Products"** means, collectively, Hardware and Software.
- j) **"Software"** means the software products listed on Palo Alto Networks' then-current published product price list, including any software embedded in Hardware.

3. DESCRIPTION OF SUPPORT PLANS

Each Product under a Palo Alto Networks Support Plan must be registered by Customer in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Customer's purchase of a Palo Alto Networks Support Plan, Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled "Support Plans and Services Offered" above, which are more fully described as follows: a) **Technical Support**

- i. Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Customer.
- ii. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled "Support Plans and Services Offered" above. b) **Secure Web Access**
 - i. Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.
 - ii. Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

Palo Alto Networks reserves the right to modify the support plans offered. Please refer to the Palo Alto Networks Support Web Site for the most current support plan descriptions.

4. SUPPORT OPTIONS

Customer shall choose from three support plans: (i) Palo Alto Networks Standard Support, (ii) Palo Alto Networks Premium Support, or (iii) Palo Alto Networks 4 Hour Premium Support.

Based upon the Customer's selection and payment of the applicable fees per the purchase, Palo Alto Networks shall have the following obligations:

a) Palo Alto Networks Standard Support

- i. Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.
- ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases. iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases. iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.

- v. Provide technical telephone support Monday through Friday, excluding Palo Alto Networks' designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.
- vi. Provide a return and repair service for Hardware defects.

Customer may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled "Support Plans and Services Offered" above.

. b) Palo Alto Networks Premium Support

Includes all of the support services described under Palo Alto Networks Standard Support plus the following:

- i. After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.
- ii. Provide a next business day ship advance replacement for Hardware defects.

. c) Palo Alto Networks 4 Hour Premium Support

This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Support plus commercially reasonable efforts by Palo Alto Networks to deliver the replacement hardware to the Customer within four hours.

5. RMA POLICY AND PROCESS

In those situations when it is necessary for Customer to return a Product to Palo Alto Networks, Customer must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

- a) **Return and Repair:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Customer shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Customer.
- b) **Advance Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Customer by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Customer. Upon receipt of a replacement Product, Customer shall return the defective Product to Palo Alto Networks in the replacement Product's packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the date of Customer's receipt of the replacement Product, Customer will be charged current list price of the replacement Product.
- c) **4 Hour RMA Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo

Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Customer within four hours of the time the Customer receives an RMA number. Customer must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to complete delivery because Customer does not have an authorized representative available, Palo Alto Networks reserves the right to charge Customer for costs incurred in making a subsequent delivery.

6. CUSTOMER OBLIGATIONS

During the term of this Agreement, Customer shall:

- a) Operate at the then-current Maintenance Release; and
- b) Use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein.

7. LIMITATIONS

The following services are expressly excluded from the Palo Alto Network Support Plans:

- a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized personnel; (ii) accident,

fault or negligence of Customer; (lii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Palo Alto Networks.

- b) Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Palo Alto Networks.

8. RESERVED.

9. NO WARRANTY

Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. RESERVED.

11. RESERVED.

Phantom Cyber Corporation
2479 E. Bayshore Road, Suite 180
Palo Alto, CA 94303

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

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

- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
13. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
PHANTOM CYBER CORPORATION

PHANTOM CYBER CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Phantom™ Product License Terms

Your access to and use of this software, including any updates or support you may receive from us (collectively "Phantom"), is governed by the terms and conditions of this agreement between you and Phantom Cyber Corporation, as supplemented or modified by the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Orders. As used in this agreement, "you" refers to you as an individual as well as other individuals you allow to access or use Phantom on your computer systems, and any legal entity you control, work for, or represent when you access or use Phantom. The terms "us" and "we" refers to Phantom Cyber Corporation.

By Executing this agreement in writing, you accept these terms and conditions. If you do not accept them, DO NOT EXECUTE THIS DOCUMENT.

1. Licensed Use Rights and Limits. Phantom is licensed to you on an annual subscription basis for installation and permitted use by you for your internal business purposes on equipment you own or control located in the United States (your "System"). Your permitted use of Phantom is subject to the limits of the subscription you selected when ordering Phantom in terms of the duration of your subscription set forth in the ordering document (the "Term") as well as the number of "Actions" per day (the 24 hour period measured using Coordinated Universal Time "UTC") executed by Phantom on your System based on the "Playbooks" you have selected for use, as these terms are used in the Phantom product documentation. If you agree with all the terms and conditions of this agreement and execute it in writing, then you may install and use Phantom on your System up to the maximum number of permitted daily Actions. You may not share a license you acquire with a third party, nor may you install or use Phantom on equipment that you do not own or control.

(a) Reserved .

(b) Reserved .

(c) Full Enterprise Version; Support. If you acquire a license for the "Full Enterprise" version of Phantom, you will receive a license key which will enable your installation of Phantom to operate with full functionality during the Term up to the maximum number of daily Actions applicable to the subscription you ordered. You will also be entitled during the Term to limited customer support in the English language made available through our website including support forums, product documentation, tutorials, community pages, and product updates if and when available. If your license to the Full Enterprise Version expires and is not renewed, your license will then convert to that of a limited functionality Community Edition and you will no longer be eligible for customer support.

2. Other License Limitations. Phantom is licensed, not sold. Phantom is protected by copyright and other intellectual property laws and treaties. This agreement only gives you limited rights to use Phantom. We reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use Phantom only as expressly permitted in this agreement. In doing so, you must comply with technical limitations in Phantom that only allow you to use it in certain ways. You may not:

- work around the technical limitations in Phantom;
- reverse engineer, decompile or disassemble Phantom, except and only to the extent that applicable law expressly permits, despite this limitation;
- install on unauthorized computers or use Phantom beyond limits specified in this agreement;
- use Phantom to develop or disclose the results of any benchmarking of performance
- publish Phantom for others to copy;

- distribute Phantom to any third party;
- rent, lease or lend Phantom; or
- transfer Phantom or this agreement to any third party.

2. Reserved.

3. Your Feedback. If you give feedback about Phantom to us, you give to us, without charge, the right to use that feedback for any purpose. You will not give feedback that is subject to a license that requires us to license our software or documentation to third parties because we include your feedback in them. These rights survive this agreement.

4. Customer service. We will use commercially reasonable efforts during our normal business hours to provide or make available limited customer support services to you upon request related to Phantom during the Term if you have a full enterprise license. Any supplemental software code, updates or materials provided to you as part of customer service for Phantom will be considered part of Phantom and subject to the terms and conditions of this agreement.

5. U.S. Government Restricted Rights. Phantom and its accompanying documentation are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-14 "Commercial Computer Software - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation," as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of Phantom by the U.S. Government shall be solely in accordance with the terms of this agreement.

6. Export Restrictions. Phantom is subject to applicable U.S. export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to Phantom. These laws include restrictions on destinations, end users and end use. You agree not to export Phantom to any prohibited country, entity, or person for which an export license or other governmental approval is required.

7. DISCLAIMER OF WARRANTIES. We warrant that Phantom will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, PHANTOM IS LICENSED "AS-IS." TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AND WE MAKE NO WARRANTIES THAT: (I) OUR PRODUCTS, SERVICES, AND/OR WEBSITE WILL MEET YOUR REQUIREMENTS; (II) OUR PRODUCTS, SERVICES, AND/OR WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (III) THE RESULTS THAT MAY BE OBTAINED FROM YOUR USE OF THE PRODUCTS, SERVICES, AND/OR USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE; (IV) THE QUALITY OF ANY PRODUCTS AND/OR SERVICES PURCHASED OR INFORMATION OBTAINED BY YOU THROUGH THE PRODUCTS, SERVICES, AND/OR WEBSITE WILL MEET YOUR EXPECTATIONS; OR (V) ANY ERRORS IN THE PRODUCTS, SERVICES, AND/OR EBSITE WILL BE CORRECTED. PHANTOM IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS WHERE A SOFTWARE MALFUNCTION COULD CAUSE PROPERTY DAMAGE OR PERSONAL INJURY, AND WE SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. WE DO NOT WARRANT IN ANY WAY THIRD-PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO "PLAYBOOKS" OR "APPS" YOU MAY DEVELOP YOURSELF OR OBTAIN FROM ANY THIRD PARTIES THROUGH OUR COMMUNITY PAGES OR ELSEWHERE. YOU ASSUME ALL RISKS IN USING THIRD-PARTY PRODUCTS OR SERVICES WITH PHANTOM.

8. LIMITATION ON AND EXCLUSION OF DAMAGES. OUR LIABILITY UNDER THIS AGREEMENT IS LIMITED. YOU CAN RECOVER ONLY DIRECT DAMAGES UP TO THE AMOUNT THAT YOU PAID FOR PHANTOM. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES. THIS LIMITATION APPLIES TO ALL CLAIMS RELATED TO PHANTOM, INCLUDING WITHOUT LIMITATION CLAIMS FOR BREACH OF CONTRACT, BREACH OF WARRANTY, GUARANTEE OR CONDITION, STRICT LIABILITY, NEGLIGENCE, OR OTHER TORT TO THE EXTENT PERMITTED BY APPLICABLE LAW. IT ALSO APPLIES EVEN IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. Reserved.

10. Applicable Law; Forum. California state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. Without limiting the parties' rights and obligations under the Arbitration Provision of this agreement, you agree that any lawsuit filed to resolve any Claim you have with us arising out of or relating to this agreement will be brought exclusively in a state or federal court located in or for Santa Clara County, and you agree to submit to the personal jurisdiction of such courts for the purpose of such Claims.

- 11. Entire Agreement; Severability.** This Agreement, together with the underlying GSA Schedule Contract and Schedule Pricelist, as well as any ordering documents prepared or signed by Phantom specifying the Term of the subscription and applicable limitations (such as the maximum number of daily Actions) constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This agreement may not be amended, supplemented or otherwise modified except by a written agreement executed by an authorized representative of both parties. If for any reason any provision of this agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision; (b) such provision will remain in effect to the extent that it is not invalid or unenforceable; and (c) such invalidity or unenforceability will not affect any other provision of this agreement.

Procore Technologies, Inc.
6309 Carpinteria Ave.
Carpinteria, CA 93101

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

1. **Scope.** This Rider and the attached **Procore Technologies, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

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

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

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

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

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

ATTACHMENT A – PROCORE TECHNOLOGIES

PROCORE Subscription TERMS

1. **Background.** Procore has developed certain construction project management Software (defined below), to which it provides access as part of its Services (defined below). Ordering Activity wishes to enter into this Agreement for a subscription to the Services identified on an Ordering Document. Procore desires to make those Services available to Ordering Activity subject to the terms of this Agreement.

2. **Definitions.** The capitalized terms listed below have the following meanings:

2.1 "Agreement" means, collectively, the terms of the Ordering Document, the underlying GSA Schedule Contract, the Schedule pricelist, and these terms.

2.2 "Authorized User" means any individual who is authorized by virtue of such individual's relationship to, or permissions from, Ordering Activity, to access and use the Services pursuant to Ordering Activity's rights under this Agreement.

2.3 "Construction Volume" means the aggregate dollar value of the construction work performed, planned, or put in place by Ordering Activity for all Ordering Activity Projects during a given time period, most often a one-year period.

2.4 "Ordering Activity Content" means any content created by or on behalf of Ordering Activity or an Authorized User in connection with the Services and Ordering Activity Projects.

2.5 "Ordering Activity Data" means the data provided by Ordering Activity to Procore regarding Authorized Users, including personally identifiable information.

2.6 "Ordering Activity Project" means each distinct construction project constrained by a specific scope, budget, and schedule, as specified in a construction project agreement. The Project lifecycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, and closeout. Procore considers projects in the construction phase to be subject to restriction in number by "project caps" within an Ordering Document that specify how many simultaneous projects may be managed under the terms of a Procore subscription. The construction phase is considered to commence with the bid and award process, and is considered to be complete upon the project owner's written acknowledgement of substantial completion, or the award of a certificate of occupancy from the local regulatory or governmental authority responsible for determining substantial completion.

2.7 "Documentation" means the online screen-share demonstration materials, marketing collateral, and other materials in written or electronic form provided to Ordering Activity by Procore in connection with Ordering Activity's subscription to the Services.

2.8 "Enhancements" means the following: minor modifications, revisions, and corresponding Documentation with respect to the Services, including the addition of enhancements or improved performance made available by Procore to the Services; however, Enhancements do not include the addition of New Features not originally included as part of the Services described on a particular Ordering Document.

2.9 "Maintenance Modifications" means bug fixes, patches, modifications, or revisions to the Services that correct errors therein; however Maintenance Modifications do not include New Features not originally included as part of the Services described on a particular Ordering Document.

2.10 "New Features" means those significant technological or service features and/or tools that Procore develops over time, which are offered to Ordering Activities as additional features for a fee and are distinct from included Enhancements and Maintenance Modifications.

2.11 "Ordering Document" means the order form document issued by Ordering Activity.

2.12 "Services" means Procore's distinct services purchased by Ordering Activity as specified on the Ordering Document.

2.13 "Site" means app.procore.com and all associated Procore mobile applications.

2.14 "Software" means Procore's software programs and any associated user interfaces and related technology that Procore uses to provide the Services, and that Procore makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

2.15 "Subscription Fee" means the agreed-upon subscription fee for the Services as stated on the Ordering Document.

3. Provision of Service/Responsibilities.

3.1 Subscription Rights and Access. Procore grants Ordering Activity the nonexclusive limited-time subscription and right to use the Services in accordance with this Agreement. Further, Procore agrees that Ordering Activity may access and use, and permit each Authorized User to access and use, the Services for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Projects, and/or other use restrictions specified on each Ordering Document. Procore shall provide to Ordering Activity the necessary passwords, security protocols and policies, and network links or connections to allow Ordering Activity and its Authorized Users to access the Services. Procore shall provide the Ordering Activity and Authorized Users with (a) support for the Services as outlined in Exhibit A, and (b) access to Enhancements and Maintenance Modifications as they become available. Ordering Activity and its Authorized Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment, and Internet service necessary for the use of the Site and Services. All other rights not expressly granted in this agreement are reserved by Procore.

3.2 Site Updates. Procore may change, modify, upgrade, or discontinue any aspect or feature of the Site in whole or in part. Such changes, upgrades, modifications, additions, or deletions will be effective immediately upon notice thereof, which may be made by posting such changes to the Site. In the event Procore modifies or discontinues any content or feature of the Site which results in reduction of functionality or degradation of the Site, Procore shall provide comparable functionality.

3.3 Limitations. Ordering Activity shall not, and shall not authorize or permit any Authorized User to (a) rent, loan, or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users, or permit Ordering Activity's account to be accessed by individuals who are not Authorized Users; (d) access, use, or permit a third party to access or use the Services or Software for purposes of competitive analysis, including the development, provision, or use of a competing software or service or for any other purpose that may be to Procore's detriment or commercial disadvantage; or (e) use the Services in any way not expressly provided for in this Agreement. Ordering Activity shall be responsible for all activities that occur under Ordering Activity's account and for all actions of Ordering Activity or its Authorized Users and both Ordering Activity and Authorized Users shall use the Services in accordance with this Agreement. Ordering Activity shall notify Procore of any unauthorized use of Ordering Activity's passwords or account, or any other breach of security that is known or suspected by Ordering Activity. Ordering Activity and its Authorized Users shall abide by all applicable local, state, and national laws and regulations in connection with their use of the Services. Ordering Activity shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users that contain terms that impose no less restrictions in all material respects than those imposed on Ordering Activity herein, including, but not limited to, the provisions regarding the use of the Services and protection of Procore's intellectual property.

3.4 Ordering Activity Content. Procore will process Ordering Activity Content as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that it has all necessary rights in the Ordering Activity Content to grant Procore the right to use, and Ordering Activity hereby grants Procore a non-exclusive, worldwide, royalty-free and fully paid license to use, the Ordering Activity Content as necessary for Procore to provide the Services. All rights in and to the Ordering Activity Content not expressly granted to Procore in this Agreement are reserved by Ordering Activity. Ordering Activity represents and warrants that any Ordering Activity Content hosted by Procore as part of the Services will not (a) infringe or violate the rights of any third party; (b) be deceptive, defamatory, obscene, or unlawful; or (c) contain any viruses, worms, or other malicious computer programming codes intended to damage Procore's system or data. Ordering Activity acknowledges that any use of the Services by Ordering Activity or Authorized Users contrary to or in violation of the representations and warranties of Ordering Activity in this section constitutes unauthorized and improper use of the Services. Ordering Activity shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Ordering Activity Content. The Parties acknowledge that Procore does not and cannot review all Ordering Activity Content and will not be responsible for such content.

3.5 Ordering Activity Data. Procore will process Ordering Activity Data as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that Ordering Activity shall only provide to Procore the minimum amount of personally identifiable information for each Authorized User to enable the Authorized User to enjoy the benefit of this Agreement. Ordering Activity represents and warrants that Ordering Activity is entitled to transfer relevant Ordering Activity Data to Procore so that Procore may lawfully use, process, and transfer the Ordering Activity Data in accordance with this Agreement on Ordering Activity's behalf and Ordering Activity shall ensure the same; Ordering Activity shall ensure that the relevant third parties, including data subjects, have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation. Ordering Activity acknowledges that Procore is reliant on Ordering Activity for direction as to the extent to which Procore is entitled to use and process the Ordering Activity Data. Procore shall process the Ordering Activity Data only in accordance with the terms of this Agreement and any written instructions given by Ordering Activity. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be transferred or stored in the United States of America in order to carry out the Services and Procore's other obligations under this Agreement. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be shared with third parties only as necessary to provide the Services. Procore will not be liable for any claim brought by an Authorized User arising from any action or omission by Procore, to the extent that such action or omission resulted from Ordering Activity's instructions.

3.6 Ordering Activity Acknowledgement. As of the effective date listed on the Ordering Document, Ordering Activity acknowledges and agrees that an authorized representative of Ordering Activity has evaluated the features and functionality of the Services in a means satisfactory to Ordering Activity and accepts that the Services have been demonstrably shown to have all of the features and functionality that have been represented to Ordering Activity. Ordering Activity agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by Procore regarding future functionality or features.

3.7 Non-Procore Applications. Procore or third parties may make available third-party products or services ("Non-Procore Applications"). Any use by Ordering Activity and any exchange of data between Ordering Activity and the provider of Non-Procore Applications is solely between Ordering Activity and the applicable provider. Procore does not warrant or support Non-Procore Applications or other non-Procore products or services. If Ordering Activity installs or enables a Non-Procore Application for use with the Services, Ordering Activity hereby grants Procore permission to allow the provider of that Non-Procore Application to access Ordering Activity's data and content as required for the interoperation of that Non-Procore Application with the Services. Procore is not responsible for any disclosure, modification, or deletion of any of Ordering Activity's data or content resulting from access by a Non-Procore Application. The Services may contain features designed to interoperate with Non-Procore Applications. To use such features, Ordering Activity may be required to obtain access to Non-Procore Applications from their providers, and may be required to grant Procore access to Ordering Activity's account(s) on the Non-Procore Applications.

3.8 Reserved.

4. Reserved.

5. Reserved.

6. Proprietary Rights.

Procore will retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Procore. Nothing in this Agreement grants Ordering Activity or any Authorized User an express or implied right to use any Procore intellectual property except as set forth in section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procore in connection with use of the Services, will be the sole and exclusive property of Procore. Procore retains the royalty-free right to use any suggestions, ideas, feedback, or other

recommendations provided by Ordering Activity or Authorized Users relating to the Services. Ordering Activity hereby grants Procore the right to contact Ordering Activity and Authorized Users in connection with their use of the Services unless otherwise stated on the Ordering Document.

7. Warranties and Liability.

7.1 Limited Warranty. Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Procore represents and warrants that (1) the Services will perform in accordance with the Documentation under normal circumstances, and (2) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry Standards. Provided that Ordering Activity notifies Procore of any breach of the foregoing warranty during the Term, Procore shall, as Ordering Activity's sole and exclusive remedy, provide the support services set forth in Exhibit A to this Agreement. The Services may contain links to sites on the Internet that are owned and operated by third parties. Ordering Activity acknowledges and agrees that Procore is not responsible for the availability of, or the content located on or through, any such external site.

7.2 Disclaimer. Except as specifically provided in this Agreement, Procore disclaims all other warranties and conditions, express or implied. Procore expressly disclaims any implied warranties, including the warranties of merchantability, fitness for a particular purpose, title and non-infringement. Procore does not warrant that the operation of the Services will be uninterrupted or error-free.

7.3 Reserved.

EXHIBIT A
SUPPORT AND MAINTENANCE

1. Service-Level Agreement.

Procore has a service-level objective for the Services of 99.9% availability, 24 hours a day, 7 days a week, 365 days a year. Downtime does not include (i) problems caused by factors outside of Procore's reasonable control, and (ii) unavailability of the Services during scheduled maintenance. Scheduled maintenance is communicated to users through "in app" notifications, with a minimum of a 24 hour notice of the scheduled maintenance.

During the Term of this Agreement, the Services will be operational and available to Ordering Activity at least 99.9% of the time in any calendar month (the "Procore SLA"). If Procore does not meet the Procore SLA, and if Ordering Activity meets its obligations under this Procore SLA, Ordering Activity will be eligible to receive the Service Credits described below. This Procore SLA states Ordering Activity's sole and exclusive remedy for any failure by Procore to provide the Service.

Definitions. The following definitions shall apply to the Procore SLA.

- a. "Downtime" means the inability to utilize the Services in the normal course of business due to a failure within the Service and not resulting from (i) factors outside of Procore's reasonable control, (ii) Ordering Activity's systems or equipment, or (iii) third party products, services or equipment not supplied by Procore.
- b. "Downtime Period" means a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.
- c. "Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.
- d. "Scheduled Downtime" means those times where Procore notifies Ordering Activity of periods of Downtime at least twenty-four hours prior to the commencement of such Downtime. There will be no more than six hours of Scheduled Downtime per calendar month. Scheduled Downtime is not considered Downtime for purposes of this Procore SLA, and will not be counted towards any Downtime Periods.

Monthly Uptime Percentage	Days of Service
< 99.9% - ≥ 99.0%	3
< 99.0% - ≥ 95.0%	7
< 95.0%	15

Service Credits. Service Credit shall be applied against the Service cost. If service is discontinued for any reason, the Service Credit shall be in the form of a rebate at the end of service. Service Credit shall be computed by dividing the number of Days of Service credited by the number 365 and multiplied by the Annual Service GSA Fee set forth in the applicable Ordering Document. In order to receive any of the Service Credits described above, Ordering Activity must notify Procore, within thirty days from the end of the month during which Ordering Activity becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Ordering Activity's right to receive a Service Credit.

Maximum Service Credit. The aggregate maximum number of Service Credits to be issued to Ordering Activity for any and all Downtime Periods that occur in a month shall not exceed fifteen days of Service Credit.

2. Support.

During the Term, Ordering Activity and Authorized Users will have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours will be 5:00 a.m. to 10:00 p.m. Pacific Time ("PT") Monday through Friday, and 10:00 a.m. to 6:00 p.m. PT Saturday and Sunday, excluding holidays. Support does not include training sessions on the features and functionality of the Services (implementation) or training in computer skills considered prerequisite to an individual's ability to use personal computers, the Internet/World Wide Web, and online software.

Upon Procore's receipt of a support request, Procore will use commercially reasonable efforts to answer questions and provide standard error corrections to known problems. In the event of any problems or errors involving the Services that Procore cannot immediately resolve, Procore will begin working on a resolution to the problem and will work diligently and in a commercially reasonable manner on the problem until it is resolved.

3. Data Backup and Return.

During the Term, Procore shall make commercially reasonable efforts to protect the security of Ordering Activity's data, and shall complete daily data backups of Ordering Activity's data to an archive format that will be kept physically separate from the Procore database and web server hardware. The Services do not replace the need for Ordering Activity to maintain regular data backups or redundant data archives.

Procore contracts with a third-party data center provider to provide essential technology services such as network connectivity to the Internet for the servers running the Services. Personnel access to the data center used by Procore for these Services is restricted, and all entrances and common areas are monitored 24x7 via closed-circuit cameras. Public access to the data center is forbidden. Fire-suppression systems are located in the data center, and power systems in the data center are designed to run uninterrupted even in the event of a total power outage. All servers are supplied with Uninterruptible Power Supply ("UPS") power sources that will continue to run if utility power fails. The UPS power subsystem is fully redundant, with instantaneous fail over in case the primary UPS fails. In the event

of an extended power outage, onsite diesel generators can run indefinitely. Generators are regularly tested to ensure functionality in the event of an emergency.

All Ordering Activity Content is the property of the Ordering Activity. Upon restriction, suspension or termination of an Ordering Activity account, Procore will allow Ordering Activity, at no additional cost, to export all of Ordering Activity Content as well any additional data that may be readily exported from the Services to a standard electronic file format. At Procore's sole discretion, an Ordering Activity's area within the Services may be kept active as long as the Ordering Activity is provided with "read-only" access. Ordering Activity shall accept this access as a full substitute for a complete file export of Ordering Activity's project data.

4. Maintenance.

4.1 Unplanned Outages. If a system failure should occur that creates an outage of the Services, Procore will utilize all reasonable means to end the outage as soon as possible. Outages due to the Internet, hosting providers, and/or Ordering Activity or Authorized User systems are outside Procore's control and, in such event, Procore will assist the Ordering Activity or Authorized User in the diagnosis but may not be able to resolve the problem.

4.2 Preventative Maintenance. From time to time, Procore or its hosting providers will perform preventative maintenance, such as updating servers and routers with security patches, and software upgrades. Procore will provide notice prior to any interruption in the Services and will keep any resulting downtime reasonable. Procore will use all reasonable efforts to perform such maintenance at hours convenient for the Ordering Activity and Authorized Users.

Project Remedies, Inc.
10 E. Maple Dr.
Woodland Hills, UT 84653

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**PROJECT REMEDIES INC.
SOFTWARE LICENSE AGREEMENT
ATTACHMENT A**

ss) Section 1: **GRANT OF LICENSE**

1.1 Contractor through Project Remedies, Inc. ("PRI") hereby grants to Ordering Activity ("Client"), and Client hereby accepts, a nonexclusive, nontransferable, perpetual license to use the software program(s) in accordance with its associated documentation (collectively, the "Software"). The Software may only be used on one or more production servers, for which a valid license key has been issued, and on one or more test / development servers, for which a valid license key has been issued, in accordance with the terms set forth below. Client may however assign this agreement to a successor in interest through merger or acquisition, to a parent or subsidiary, or to a purchaser of all or substantially all of the assets of the division that is to use the Software. Any assignment of Client's interest, other than as described herein is prohibited without prior written consent of PRI. For purposes of this Attachment A only, the definition of "Client" shall include Client affiliate organizations, which shall agree to use the software program(s) pursuant to the terms and conditions of this Attachment A.

1.2 Client is authorized to use the Software for Client's own internal business purposes. Client will not copy or reproduce the Software, except for back-up and archival purposes.

1.3 Client shall not, directly or indirectly, nor shall Client permit others to: copy, duplicate or furnish to others any physical, magnetic or optical version of the Software provided by PRI; remove any copyright or other notice contained or included in the Software or any material provided by PRI; or change, modify, reverse engineer, decompile, disassemble or create derivative works from the Software or any other material provided by PRI.

1.4 Reserved.

Section 2: **RESERVED**Section 3: **DELIVERY**

3.1 Contractor through PRI will deliver the Software to Client upon receipt of Client's purchase order. PRI software will be installed on Client's Remedy test / development server by PRI consultants working with Client's Remedy Action Request System administrator. The software will be tested by Client personnel to insure that the Software performs substantially in accordance with the functionality documented in the APM Getting Started Guide, the APM Time Tracking Quick Reference Guide and the APM Administrator Notes, which are incorporated herein by reference.

3.2 Reserved.

tt) Section 4: **SYSTEM MAINTENANCE AND SUPPORT**

4.1 During the term of the purchase order, Contractor through PRI will provide the following maintenance services at the GSA Schedule fees noted on the Quotation.

1. Any known problem solutions relating to the Software as such solutions become known to PRI.

2. Timely response to Client's requests for corrections of program coding errors.

3. Telephone support in the form of counsel and advice on the use and maintenance of the Licensed Material during PRI's normal business hours.

4. All releases, modifications, refinements and enhancements which PRI elects to incorporate into and make part of the Software and does not separately or additionally price or market.

4.2 Client understands and agrees that all solutions, corrections, modifications, refinements, enhancements and new releases supplied by PRI are to be implemented within the normal production schedule of Client. Client further recognizes that its failure to so implement such solutions, corrections, modifications, enhancements and new releases may render the Software unusable or nonconforming to system documentation and Client agrees to assume all risks arising therefrom. Any modification made to the Software by Client's personnel other than those authorized by PRI shall invalidate PRI's obligations under this section.

4.3 Reserved.

Section 5:

WARRANTIES

5.1 Contractor through PRI warrants that, so long as Client uses the Software properly and in accordance with its intended use, the Software will perform substantially in accordance with the APM Getting Started Guide, the APM Time Tracking Quick Reference Guide and the APM Administrator Notes, which are incorporated herein by reference, for a period of ninety (90) days from the date all software is successfully installed, and the media on which the Software is distributed and the associated documentation will be free of physical defect for a period of ninety (90) days from the date of delivery. PRI's entire liability and your exclusive remedy shall be, at Project Remedies Inc.'s option, either (a) product replacement, or (b) refund of the license fee.

5.2 Contractor through PRI warrants the Software is free from computer viruses introduced as a result of the negligence or intentional acts of PRI, its agents or employees and that PRI, its agents or employees will not embed any device in the Software or take any action to disrupt or terminate its operation of such Software.

5.3 Contractor through PRI further warrants that it is the sole owner of, or that it has the right to license the use of, the Software being used for Client's purposes, and that it has the right to provide Client with a nonexclusive license for the use of the Software.

5.4 The Software (i) is designed to be used prior to, during, and after the calendar year 2000 AD; (ii) will operate during each such time period without any error or interruption relating to, or the product of, data or input which includes an indication of or reference to a date ("Date Data") which represents or references different centuries or more than one century; (iii) will, under normal use and service, record, store, process and present calendar dates falling on or after September 9, 1999, January 1, 2000 and February 29, 2000, in the same manner, and with the same functionality, data integrity and performance, as the Software records, stores, processes and presents calendar dates on or before September 8, 1999, December 1, 1999 and February 29, 1996; and (iv) recognizes the year 2000 as a leap year. PRI shall cooperate with any year 2000 problem identification and/or testing procedure carried out by Client and/or securities industry groups, without charge to Client. Notwithstanding anything else in this or any other agreement, PRI consents to Client releasing information regarding any such procedure or the results thereof.

5.5 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED MATERIALS OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section
RESERVED

6:

Section 7: **RESERVED**

Section 8: **TITLE**

PRI shall retain title to the Software including all versions and embodiments thereof and all additions and modifications thereto. PRI does not by this Attachment A convey any proprietary interest therein to Client. Client agrees that the Software, including all changes made thereto by anyone and any materials related thereto that are supplied by or developed by PRI, is the valuable property of PRI. Client further agrees to treat the Software and related materials accordingly and agrees diligently to preclude all access to the Software except as provided herein, to keep the same confidential, by using the same care and discretion that Client uses with respect to its own confidential property.

Section 9: **RESERVED**

Section 10: **RESERVED**

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Section 11 **U.S. GOVERNMENT RESTRICTED RIGHTS**

The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of the DFARS 52.227-7013 or subparagraphs (c)(1) and (2) of the Rights in Data at 48 CFR 52.227-14 or any successor rules of regulation. The manufacturer of the Software is Project Remedies Inc., 2034 Palisades Dr., Suite W, Pacific Palisades, CA 90272 USA.

Section 12 **EXPORT**

The United States Government strictly controls the exportation of technical materials. Client agrees that Client will not directly, or indirectly, without prior written consent, if required, of the Office of Export Licensing of the U.S. Department of Commerce, Washington DC, 20230, export or transmit the Software to Afghanistan, the People's Republic of China or to any group Q, S, W, Y, or Z country (as specified in Supplement No. 1 to Section 770 of the U.S. Export Administration Regulations or a successor thereto) issued by the U.S. Department of Commerce or to any country to which such transmission is restricted by applicable regulations or statutes.

Section 13 **RESERVED**

Proofpoint, Inc.
892 Ross Drive
Sunnyvale, CA 94089-1443

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Proofpoint, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any

excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention

procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PROOFPOINT, INC.

PROOFPOINT, INC. LICENSE, WARRANTY AND SUPPORT TERMS

The following terms apply to each GSA Customer ("Customer") license of Proofpoint Products from Vinitech Inc, ("Reseller") under the GSA Schedule Contract, "License":

"Proofpoint Products" means the appliance, service or software listed in the GSA Schedule Price List by Vinitech Inc., on June 15, 2014, and licensed by Customer from Vinitech pursuant to a GSA Customer Purchase Order ("Order").

"Documentation" means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer's purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

"Mailbox" means a separate account on Customer's e-mail server for sending or receiving messages or data within Customer's e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer's email server for the receipt of messages or data within Customer's e-mail system or network. For Proofpoint Product Social Archive and/or Governance, "Mailbox" hereunder shall be deleted and replaced with **"Named User"**.

License. Customer is granted a limited term, non-sublicensable, non-transferable, and nonexclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer's internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer's right to access or use Proofpoint Products is limited to those parameters set forth in the applicable GSA Customer Purchase Order ("Order") provided to Proofpoint including, but not limited to the maximum number of Mailboxes ("Licensed Mailbox Count") (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

License Restrictions.

Customer will not and will not allow any third party to:

- a) copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;
- b) reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;

- c) remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;
- d) sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products;
- e) export any Proofpoint Products in violation of U.S. laws and regulations;
- f) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;
- g) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;
- h) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer's organization without Proofpoint's prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person's image, identity, and likeness) or privacy; (c) violation of any federal law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, antidiscrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or Documentation or any portion thereof; or
- i) upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

Customer Responsibilities. Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) and service providers (if applicable) in managing its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer's data, or where Customer's use of the Proofpoint Products are in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to resist to use the Secure Share. For the purposes of Proofpoint's compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer's direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.

If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.

Support and Service Levels. For Customer who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint's standard support terms which are currently described on Exhibit A.

Reporting. Customer is under no obligation to increase the number of Mailboxes its uses for subscription based Proofpoint Products based on Mailbox count. However, Customer understands and agrees that if Customer adds Mailboxes to the Licensed Mailbox Count for such Proofpoint Products that exceed 10 percent of the Licensed Mailbox Count, it will execute a new or modified Order for the additional mailboxes.

Customer shall also audit its Mailbox count on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Licensed Mailbox Count then Customer will execute a new or modified Order for the additional mailboxes.

Warranty Disclaimer. PROOFPOINT DISCLAIMS (AND PROOFPOINT IS ALSO REQUIRED UNDER ITS CONTRACTS WITH ITS SUPPLIERS AND LICENSORS TO STATE THAT SUCH SUPPLIERS AND LICENSORS ALSO DISCLAIM) ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THAT THE ACCURACY OF THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF MANAGEMENT OF ANY DOCUMENT, OR THAT NO DOCUMENT WILL BE LOST. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

Disclaimer of Liability. All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint's negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

Proofpoint Contract Rights. Customer agrees that Proofpoint is a party to this Agreement with all rights to enforce such provisions to this Agreement, including but not limited to the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

Law. This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

Force Majeure. Pursuant to FAR 52.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party's reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

Open Source Software: Proofpoint Appliance/Software for Customer On-Site Deployment. Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:

"Open Source Software" means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information, (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer's name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

Proofpoint Product - Email Archive. Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the GSA Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

Termination. When the end user is an instrumentality of the U.S., recourse against the United

States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Proofpoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Within thirty (30) days after expiration or termination of the License to use the Proofpoint Product, Customer shall: (i) certify in writing to Proofpoint that all copies of the Software, Software Updates, and Documentation in any form, including partial copies or extracts thereof, have been destroyed or returned to Proofpoint, and (ii) retrieve or dispose of Customer data from or within the Proofpoint Products and/or systems. Upon 30 days of termination of the License to use the Proofpoint Product, Customer data in the Proofpoint Product and/or systems may be rendered illegible, deleted or written over, including any back-up Customer data.

Exhibit A

SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS

Overview: The support services described herein are provided by Proofpoint to each GSA Customer ("Customer") pursuant to the terms and conditions of the applicable license agreement ("Agreement") between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

1. Bronze Support services consist of the following:

1.1 Error Corrections. Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

1.2 Software and Documentation Updates. Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, "Updates"). Updates do not include products or options that are designated by Proofpoint as new products or options which are subject to the execution of a new or modified Order. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on the customer support portal.

1.3 Support Requests and Named Support Contacts. Technical support is available during the technical support hours for the primary support center specified in the an applicable Order. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint's web-based call submission and tracking system ("CTS") at any time. Support requests submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer's operating environment and operation of the Proofpoint

GSA CUSTOMER:	PROOFPOINT, INC.:
Individual Signing: [print name]	Individual Signing: [print name]
Signature:	Signature:
Title:	Title:
Signing Date:	Signing Date:
	PROOFPOINT, INC. ADDRESS: 892 Ross Drive Sunnyvale, CA 94089 USA Attn: General Counsel

Products (collectively, "Named Support Contacts"). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer's cases on CTS at any time.

1.4 Platinum Support. In addition to the Bronze support services defined above, , Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint, 24 hours per day x7 days per week, 365 days per year; (24x7x365) and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support hours specified in Section 1.3 above.

1.5 Premium Support. In addition to the Bronze and Platinum support services defined above, Customer shall receive (i) two additional Named Support Contacts (for a total of six) and (ii) Proofpoint will assign a designated Technical Account Manager to Customer's account.

1.6 Global Time Zone Add On. Any Customer that has purchased support at the Platinum level or higher, may purchase the Global Time Zone Add On. Customer may submit a new Order to receive six additional Named Support Contacts (for a total of twelve) and Proofpoint shall provide assistance for errors of any priority, as reasonably determined by Proofpoint, 24x7, 365 and (ii) a dedicated phone line.

1.7 Named Support Contact Training. In order to receive support in accordance with the foregoing, within ninety days of the Effective Date, all Named Support Contacts must take and pass exam(s), as applicable and available, to become an "Accredited Engineer" (<http://www.training.proofpoint.com/accredited-engineer/>) for each Proofpoint Product licensed by Customer. If any Named Support Contact fails to pass the exam, Proofpoint may reasonably request that such Named Support Contact be replaced by Customer. Failure to pass the applicable exam(s) may result in limited access to CTS.

2. Priority Levels of Errors and Responses

In the performance of Support services, Proofpoint will apply the following priority ratings.

2.1 Priority I Errors.

A "Priority I Error" means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint's efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop a suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

2.2 Priority II Errors.

A "Priority II Error" means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.3 Priority III Errors. Description: A "Priority III Error" means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.4 Priority IV Errors.

A "Priority IV Error" means a Software program error which prevents some function or process from substantially meeting the Documentation, but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next Software update.

3 Customer's Cooperation.

Proofpoint's obligation to provide Support services is conditioned upon the following: (i) Customer's reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer's provision to Proofpoint of sufficient information and resources to

correct the problem, including, subject to Government security requirements, remote access as further discussed in these policies, (iii) Customer's prompt installation of all Software maintenance releases, bug fixes and/or work-arounds supplied by Proofpoint, and (iv) Customer's procurement, installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint's response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services, for purposes relating to providing Support to Customer and subject to Government security requirements, Proofpoint may obtain information regarding Customer's e-mail communications. Customer agrees that Proofpoint may use any statistical data generated relating to Customer's e-mail subject to Government security requirements. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

4. Reproducing Problems; Remote Access.

Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. For a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint's obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer's computer system(s) and network subject to Government security requirements. Any such remote access by Proofpoint shall be subject to Proofpoint's compliance with Customer's security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer's failure to provide the foregoing remote access shall extend the response time periods set forth in Section 2 accordingly. Proofpoint will notify Customer of any additional work required by the GSA Customer's failure to provide access and will afford the GSA Customer an opportunity to execute a new or modified Order. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

5. Support Services Conditions.

5.1 Support Issues Not Attributable to Proofpoint. Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer's negligence, hardware malfunction, or thirdparty software. Proofpoint may offer Support services for problems caused by any of the above pursuant to the execution of a new or modified Order.

5.2 Exclusions from Support services.

The following items are excluded from Support services:

- (a) In-depth training. If a Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint's training or consulting departments.
- (b). Assistance in the customization of an application. Support services do not include providing assistance in developing, debugging, testing or any other application or customization.
- (c). Information and assistance on third party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.
- (d) Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer's environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided pursuant to the execution of a new or modified Order.
- (e). Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes. If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed Order and a SOW, if required by the Contracting Officer.

6. Description of Appliance Support Services.

6.1 Services.

For as long as the Appliance purchased by Customer is under Proofpoint's Appliance warranty Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site subject to Government security requirements, depending on Customer's location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

6.2 Customer Obligations.

Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer's Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating an Appliance. It is Customer's responsibility to back up the data on Customer's system, and to

provide adequate security for Customer's system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer's computer or network systems. Subject to Government security requirements, Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer's facilities necessary for Proofpoint to fulfill its obligations.

6.3 Exclusions.

Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.

Prosoft Systems
4000 Legato Rd. Suite 1100
Fairfax, VA 22033

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Prosoft Systems** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any

excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention

procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A - PROSOFT SYSTEMS

1 1 PROSOFT SYSTEMS INTERNATIONAL SOFTWARE LICENSE

1.01 SCOPE OF LICENSE. The Software Product is licensed, not sold. This Agreement only gives Ordering Activity some rights to use the Software Product. Prosoft reserves all other rights. Unless applicable law gives Ordering Activity more rights despite this limitation, Ordering Activity may use the Software Product only as expressly permitted in this Agreement. In doing so, Ordering Activity must comply with any technical limitations in the Software Product that only allow Ordering Activity to use it in certain ways. Ordering Activity may not:

- work around any technical limitations in the Software Product;
- reverse engineer, decompile or disassemble the Software Product, except and only to the extent that applicable law expressly permits, despite this limitation;
- remove, minimize, block or modify any notices of Prosoft or its Affiliates or suppliers in the Software Product;
- use the Software Product in any way that is against the law;
- share, publish or lend the Software Product, or provide the Software Product as a stand-alone hosted as solution for others to use, or transfer the Software Product or this Agreement to any third party; or

1.02 License Types:

The scope and term of Ordering Activity's license is limited to the exact license type listed in the Ordering Activity's license certificate, order form, or other documentation provided upon purchase of Software Product.

1.03 CRM Licensing Requirements

Access to Microsoft Dynamics CRM Organization(s) via a Software Product does not remove or substitute baseline Microsoft Dynamics CRM licensing requirements.

1.04 Reserved.

2 RESERVED

2 3 SUPPORT SERVICES

3.01 Prosoft may, in its sole discretion, provide Ordering Activity with support services related to the Software Product ("Support Services"), as set forth in the applicable ordering document. Any supplemental software code provided as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Agreement. With respect to technical information Ordering Activity provides to Prosoft as part of the Support Services, Prosoft may use such information for its business purposes, including for product support and development. Prosoft will not utilize such technical information in a form that

identifies Ordering Activity. Prosoft will not utilize such information in a manner that discloses Ordering Activity's confidential information to any third party.

3 4 UPGRADES

4.01 Software Products labeled as upgrades will be available to Ordering Activity upon the purchase of Prosoft annual software maintenance offering as set forth in the applicable ordering document. A Software Product labeled as an upgrade replaces and/or supplements the product that formed the basis for Ordering Activity's eligibility for the upgrade. Any such upgrade shall be considered part of the Software Product subject to the then-current terms and conditions of this Agreement.

5 RESERVED

4 6 INTELLECTUAL PROPERTY

6.01 Software Products and other deliverables are protected by copyright and other intellectual property rights laws and international treaties. Prosoft (1) does not transfer any ownership rights in any Software Products and (2) reserves all rights not expressly granted to Ordering Activity under this Agreement.

5 7 WARRANTY & REMEDIES

7.01 Prosoft warrants that the Software Product will perform substantially as described in the applicable Software Product documentation for ninety (90) days from the date it is delivered to Ordering Activity. If it does not and Ordering Activity notifies Prosoft within the warranty term, then Prosoft will, at its option and sole discretion, (1) repair or replace the Software Product or (2) return the price Ordering Activity paid for the Software Product license, and Ordering Activity must uninstall and destroy all copies of the Software Product in its possession.

7.02 The remedies above are Ordering Activity's remedies for breach of the warranties in this section. Ordering Activity waives any breach of warranty claims not made during the warranty period.

7.03 Exclusions. The warranties in this Agreement do not apply to problems caused by accident, abuse or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, evaluation, pre-release or beta products, or to components of Software Product that Ordering Activity is permitted to redistribute.

7.04 Disclaimer. Except for the limited warranties above, Prosoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

7.05 Ordering Activity represents and warrants that it has the legal right and power to enter into this Agreement and that it will not use the Software Product in a way or for any purpose that infringes or misappropriates any third party's intellectual property or personal rights.

Pulse Secure
2700 Zanker Road, Suite 200
San Jose, CA 951314

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Pulse Secure** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any

excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention

procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PULSE SECURE

PULSE SECURE LICENSE, WARRANTY AND SUPPORT TERMS

PULSE SECURE SOFTWARE END USER LICENSE AGREEMENT LAST REVISED: NOVEMBER 17, 2015

PLEASE CAREFULLY READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU ACQUIRED THE SOFTWARE (EITHER STAND-ALONE OR AS PART OF PULSE SECURE HARDWARE) AND YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, THEN DO NOT INSTALL OR USE THE SOFTWARE AND CONTACT PULSE SECURE WITHIN 30 DAYS OF THE PURCHASE REGARDING THESE TERMS OR A REFUND.

IF YOU AND PULSE SECURE HAVE SIGNED A SEPARATE WRITTEN AGREEMENT COVERING YOUR RIGHTS AND DUTIES WITH RESPECT TO THE SOFTWARE, THEN THAT WRITTEN AGREEMENT TAKES PRECEDENCE OVER ANY CONFLICTING TERMS OF THIS AGREEMENT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTERPRISE'S END USERS, IT IS YOUR RESPONSIBILITY TO COMMUNICATE THE INFORMATION IN THIS AGREEMENT TO THE ENTERPRISE END USERS AND ENSURE COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN. BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU UNDERSTAND THIS AGREEMENT AND ACCEPT ALL OF ITS TERMS. IF YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THE TERMS OF THIS AGREEMENT.

This Agreement governs Your rights and duties with respect to the Software. Capitalized terms used in this Agreement are defined in Section 28 (Definitions).

1. License Grant.

a. When You purchase or rightfully receive a license to a Software product, Pulse Secure grants You a revocable, non-exclusive, non-transferrable right to install and use that Software for the term stated in Your Proof of Entitlement.

b. Subject to the terms and conditions set forth herein, as long as Your use of the Software does not exceed the scope of the License Metric and quantity of License Metric Units that You purchased, You may install and use the Software on any device that supports it (and You may move the Software from one device to another). Notwithstanding the foregoing, the operating system software (and any separately licensable Software products that may be included along with the operating system software in the

object code image You receive from Pulse Secure) and its Updates, may ONLY be installed and used on another Pulse Secure Platform that You have purchased or leased from Pulse Secure or an Approved Source for Your own use and not for resale.

2. Licensing Model(s)

Software offered by Pulse Secure employs trust-based or programmatic license enforcement. Where applicable, it is Your responsibility to both monitor Your usage level, and purchase sufficient License Metric Units to meet Your Software usage.

3. License Name

Each Software product is identified by a unique name. This name, when combined with a Version number corresponds to a specific base set of product features and functionality identified for that Version of the Software in the Documentation.

4. Term of License

a. Subscription/Term-based License. If Your license is a Subscription or a Term-based license, then the term of the Subscription shall be twelve (12) months from the Start Date, unless Your Proof of Entitlement states otherwise. You may, however, renew or reinstate Your Subscription or renew Your Term-based license, subject to the terms of the applicable SDD. Renewals and/or reinstatements are subject to the terms of Pulse Secure Policies at the time of the renewal and/or reinstatement.

b. Special Purpose License. If Your license is a Special Purpose License (see Section 6, below), then its term shall be as stated in Your Proof of Entitlement. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your Special Purpose License shall be thirty (30) days from date that You first received the Software, whether via download or otherwise.

c. Perpetual License. If You have a valid Proof of Entitlement that clearly states that Your license is "Perpetual," then, except as stated below, Your license is perpetual, subject only to termination for nonpayment of license fees or other breach of this Agreement. An otherwise perpetual license to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates nonetheless terminates if and when You sell or otherwise transfer the Pulse Secure Platform on which You use it, or when Your lease to that Pulse Secure Platform terminates.

5. License Metrics

License Metrics include the following:

a. Managed Users - the number of individuals to which You and Your authorized users grant access for one or more services furnished, managed, or provisioned by any instance of the Software. A Managed User who accesses such services through multiple devices is nonetheless counted as a single Managed User.

b. Concurrent Sessions – the number of devices to which You and Your authorized users grant access for one or more services concurrently furnished, managed, or provisioned by any instance of the Software.

c. Other Forms of License. Other License Metrics may be defined for specific Software products.

6. Special Purpose Licenses

Special Purpose Licenses are limited, short-term licenses that may not be used for any production or commercial application or similar use.

a. Demonstration Use/NFR-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Demonstration Use", "Not for Resale" or with words of like meaning, AND if You are a Pulse Secure-authorized distributor or reseller, then for the license term (see Section 4, above) You may use the Software, but only to demonstrate features and performance of the Software to prospective buyers, and only while You remain a Pulse Secure-authorized distributor or reseller. The Software provided under this license may not be resold. Maintenance Services must be purchased along with the Demonstration Use/NFR license.

b. Research and Development Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Research and Development Use", "Lab Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal research and development.

c. Evaluation Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Evaluation Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

d. Beta Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Beta Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of a Beta Version of the Software.

e. Education Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Educational Use," "Training Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software solely as a training tool in a Pulse Secure-authorized class that You conduct in the use of that Software. You may so use the Software only while You are operating under a valid agreement with Pulse Secure. You may not, however, allow anyone to access the Software other than the instructor and the students duly enrolled in the class, and You may not allow students to copy or download or remove any copy of Software or to use the Software other than for conduct of coursework.

7. Maintenance Services; Updates.

a. General. Subject to the Pulse Secure Policies, Pulse Secure may make available Maintenance Services. All Maintenance Services are subject to the terms and conditions of this Agreement and the applicable SDD.

b. Subscriptions. If Your Software is licensed under a Subscription, the applicable Maintenance Services for that Software shall be included in the Subscription for the term of the Subscription, as indicated in your Proof of Entitlement and applicable SSD. If Your license is not a Subscription License, then Maintenance Services are available only if You order them separately and purchase them at an additional fee.

c. Updates. Updates are available to You only as a part of Maintenance Services. By downloading or taking delivery of any Update, Your rights with respect to the Update are subject to the following: (1) the terms of the latest revision of this Agreement posted at the time of Your receipt of the Update; (2) the then-current applicable SDD; (3) any then-current Pulse Secure Policies; and (4) Your Proof of Entitlement for the Software. Your rights to use the Update are also subject to Your ceasing all use of the replaced Software (or, as the case may be, the replaced portion of the Software in the case where an Update is provided in the form of a patch).

8. License Restrictions, Limitations and Prohibitions

This Section 8 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Special Purpose Licenses, Subscriptions, Perpetual or otherwise:

a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.

b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.

c. No Sublicensing or Assignment. You may not sublicense, transfer or assign, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement. Any attempted sublicense, transfer or assignment shall be void.

d. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization (collectively, a "Restructure") where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.

e. You are Sole Licensee. No rights or licenses in the Software or any Maintenance Services shall arise under this Agreement in favor of anyone other than You.

f. Separately Licensable Software. The software image that contains Software product that You license from Pulse Secure or its Approved Sources might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license under a separate order and at an additional fee. Specific features and functionality are included in Your license to the Software product You licensed only if published Pulse Secure Documentation for that Version of the Software identifies those features and functionality as being included.

g. Restrictions on charging a fee for access or use. You shall not allow any authorized user of the Software or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software.

h. Other Use Restrictions and Prohibitions. You shall not, directly or indirectly:

- (i) Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver. If the law requires Pulse Secure to provide interface information to You to adapt the Software, Pulse Secure, at its option, may either (A) provide the information to You subject to Your acceptance of non-disclosure and use limitation terms that Pulse Secure reasonably requires, or (B) perform that adaptation itself at a reasonable charge for services;
- (ii) Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Pulse Secure;

- (iii) Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image You have received even if any such library, file, module or other component is separately licensable, or use any such modules, files or other components separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);
- (iv) Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to Pulse Secure for compliance with all provisions of this Agreement;
- (v) Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files, notices, disclaimers, marks and labels included in the Software as delivered by Pulse Secure; or
- (vi) Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity.

9. License and Maintenance Contract fees; Taxes.

a. Fees. Unless otherwise specified in, Your Proof of Entitlement or a separate written agreement between You and Pulse Secure; License fees, Subscription fees and fees for Maintenance Services contracts are due and payable in advance upon Your placement of an order.

b. Taxes. All prices and fees payable in respect of any license to Software (including any Subscription) or any Maintenance Services contract entered into with Pulse Secure are exclusive of tax. You shall be responsible for paying taxes arising from the licensing or delivery of Software (including any Subscription) or purchase of Maintenance Services. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Pulse Secure prior to invoicing, and You shall promptly notify Pulse Secure if Your exemption is revoked or modified. All payments that You make shall be net of any applicable withholding tax. You will provide reasonable assistance to Pulse Secure in connection with such withholding taxes by promptly providing Pulse Secure with valid tax receipts and other required documentation showing Your payment of any withholding taxes; completing appropriate applications that could reduce the amount of withholding tax to be paid; applying for reduced tax rates; and notifying and assisting Pulse Secure in any audit or tax proceeding related to transactions hereunder. Your obligations under this Section 9.b shall survive termination or expiration of this Agreement. Pulse Secure shall state separately on its invoices taxes excluded from the prices and fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

10. Termination.

a. Effect of Termination or Expiration. If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to Pulse Secure all copies of the Software and related documentation in Your possession or control.

b. Survival. The provisions of Sections 8, 9.b, 10.c, 10.d and 11-28 shall survive termination or expiration of this Agreement.

11. Recordkeeping and Audit.

a. Your Duty to Monitor Use. You agree to monitor Your use of all Software and generate accurate, complete and auditable records of the levels of that use.

b. Reports of Excess Use; Purchase of Additional License Metric Units. If at any time Your maximum level of use of the Software exceeds the number of License Metric Units You have purchased, then on or before ten (10) days after the last day of the calendar quarter in which Your level of use first exceeded that limit, You shall (i) notify Pulse Secure in writing of Your maximum level of use and (ii) order and purchase sufficient License Metric Units (in increments of the applicable minimum allowable number of License Metric Units) to meet or exceed the maximum level of use of the Software during such calendar quarter. Your Proof of Entitlement or separate written agreement with Pulse Secure may require You to report on Your usage more often. Failure either to timely report such excess use or to timely purchase and pay for the required additional License Metric Units in accordance with this subsection 11.b shall be a material breach of this Agreement.

c. Pulse Secure's Right to Audit. In order to enable Pulse Secure to verify Your compliance with this Agreement, You shall, throughout the term of the license and for three (3) years thereafter, provide to Pulse Secure and its professional advisors access to such facilities, personnel, records and reports, for their inspection and copying, as reasonably necessary to validate compliance with this Agreement but no more than once every 12 months. Pulse Secure and its professional advisors shall comply with all Your security requirements. This includes:

i) all Software monitoring records generated and maintained under this Section 11, and

ii) all other written or electronic data and reports that You generate or receive relevant to a determination of whether You have complied with this Agreement.

d. If any inspection under subsection 11.c discloses that You used the Software in excess of applicable License Metric Units and failed to timely comply with subsection 11.b, then on notice of the inspection results, Pulse Secure shall immediately:

i) invoice You and You shall purchase and pay for sufficient additional License Metric Units (in increments of the applicable minimum allowable License Metric Units) to meet or exceed Your maximum level of use of the Software; and that may have been required for Your use which at any time exceeded Your purchased License Metric Units;

ii) invoice You and You shall purchase and pay for contracts for Maintenance Services sufficient to cover Your new total number of License Metric Units;

The remedy stated in this Section 11.d is in addition to any other remedy Pulse Secure may otherwise have.

12. Confidentiality. The parties agree that aspects of the Software and associated documentation are the confidential property of Pulse Secure. As such, You shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which, at a minimum includes restricting access to the Software to Your employees and contractors having a need to use the Software for Your internal business purposes.

13. Your Data.

Pulse Secure treats Your information in accordance with its Privacy Policy found at <http://www.pulsesecure.net/legal/privacy-policy>.

14. Ownership.

Pulse Secure and Pulse Secure's licensors, respectively, retain exclusive ownership of all right, title, and interest in and to all intellectual property in the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.

15. Limited Warranties.

a. Software Limited Warranty

(1) SOFTWARE LICENSED UNDER A SPECIAL PURPOSE LICENSE ARE FURNISHED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

(2) For any other license of Software under this Agreement, Pulse Secure warrants for Your sole benefit that for a period of ninety (90) days from the Start Date (the "Software Warranty Period"), the Software shall substantially conform to the Documentation. You may not make a software warranty claim after the lapse of the Software Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF PULSE SECURE FOR BREACH OF ANY WARRANTY REGARDING SOFTWARE UNDER THIS SECTION 15 SHALL BE THE REPLACEMENT OF THE DEFECTIVE SOFTWARE.

b. Restrictions: No warranty will apply if the Software (i) has been altered, except by Pulse Secure; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation and instructions supplied by Pulse Secure; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed pursuant to a Special Purpose License. In addition, Software is not designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product, and Pulse Secure disclaims any express or implied warranty of fitness for such uses. You are solely responsible for backing up its programs and data to protect against loss or corruption. PULSE SECURE WARRANTY OBLIGATIONS DO NOT INCLUDE INSTALLATION, REINSTALLATION OR MAINTENANCE SERVICES OF ANY KIND.

c. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 15, TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. PULSE SECURE DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

16. Limitation of Damages. To the extent permitted by law:

a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF PULSE SECURE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS TO YOU FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE: (i) PRICE PAID TO PULSE SECURE FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE CURRENT SUBSCRIPTION, OR FOR THE CURRENT CONTRACT FOR MAINTENANCE SERVICES, WHICHEVER GAVE RISE TO THE CLAIM.

b. IN NO EVENT SHALL ANY BREACH BY PULSE SECURE IN CONNECTION WITH ANY REPRESENTATIONS, WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE OR WITH ANY DUTIES RELATING TO FURNISHING YOU WITH MAINTENANCE SERVICES EXCUSE YOUR UNAUTHORIZED USE OF SOFTWARE OR IMPAIR PULSE SECURE'S RIGHT TO TERMINATE ANY LICENSE BASED ON YOUR BREACH OF THIS AGREEMENT.

c. NEITHER PULSE SECURE NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR RELATING TO THE PULSE SECURE PLATFORM, SOFTWARE, USE OF THE SOFTWARE OR TO ANY MAINTENANCE SERVICES.

d. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

e. TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ANY AND ALL LIABILITIES OR OBLIGATIONS WHATSOEVER RELATED TO THE PULSE SECURE PLATFORM, SOFTWARE OR ITS LICENSING TO OR USE BY ANYONE OTHER THAN YOU.

f. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM PULSE SECURE'S NEGLIGENCE; (2) FRAUD; OR (3) ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

g. Pulse Secure has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability stated above. Those disclaimers and limitations reflect an allocation of risk between Pulse Secure and You, and they form an essential basis of the bargain between Pulse Secure and You.

17. Compliance with Laws; Export Requirements.

You shall comply with all applicable laws and regulations in connection with the movement and use of the Software and any Maintenance Services. You acknowledge and agree that the Software as well as related technical data and assistance that may be furnished in the course of the Maintenance Services may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that the Software was not furnished to You as a result of an export or re-export or import in violation of US or other applicable laws or regulations, that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country, and that You are not using any Software or technology furnished hereunder or in connection with any Maintenance Services to further activities in support of the development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify Pulse Secure if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to Pulse Secure of an ultimate destination of the Software, You shall not export, either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government as required. You understand and agree that Pulse Secure may without liability or breach impose certain restrictions and conditions on Maintenance Services in order to protect against violation of export control laws.

18. Commercial Computer Software.

The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and the Proof of Entitlement.

19. Third Party Software

Any licensor of Pulse Secure whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were Pulse Secure. Certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s). This Software is licensed subject to open source software licenses. For information, click [here](http://www.pulsesecure.net/techpubs/licensing/attribution) <http://www.pulsesecure.net/techpubs/licensing/attribution> or contact opensource@pulsesecure.net.

20. Governing Law.

This Agreement (including all documents incorporated herein) and the terms of any contract for Maintenance Services with Pulse Secure shall be governed by the Federal laws of the United States (without reference to its conflicts of laws principles). The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply.

21. Force Majeure

Except for Your duty to make payment for, Software licenses or contracts for Maintenance Services, and except for Your unauthorized installation or use of Software, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises ("Force Majeure"), provided that the party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. Either party shall be entitled to terminate this Agreement if the Force Majeure event continues for a period of one month.

22. Applicability of This Agreement.

a. Separate Signed Agreements. If You and an authorized representative of Pulse Secure have signed a valid separate written agreement governing Your use of any or all Software licensed from Pulse Secure, then with respect to that Software that signed agreement will take precedence over any inconsistent terms of this Agreement.

b. Transition Rules. If You licensed any Software from Pulse Secure under a different End User License Agreement, then this Agreement shall apply to that Software if and when, following posting of this Agreement at <http://www.pulsesecure.net/support> You either purchase additional License Metric Units for the Software, renew the license at the end of the license term or reinstate the license after the license expires.

23. Complete Agreement; Modifications.

Except as otherwise provided in subsection 22.a, this Agreement together with the Applicable SDD, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software and Maintenance Services. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in subsection 22.a, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.

24. Severability.

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. This Agreement and associated documentation have been written in the English language, and the parties agree that the English version will govern.

25. Notification.

Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in a writing, if to Pulse Secure by mail to 2700 Zanker Road, Suite 200, San Jose, CA 95134 USA, Attn: Legal Department, provided that the notice identifies You by name, address and email address; or, if to You, by email to Your contact email address (or by mail addressed to Your street address that is associated with Your user account for registration with Pulse Secure. If You have no such user account, then notification shall be deemed given to You by emailing or mailing notice to any office or contact email address for the Approved Source from which You acquired Your license.

26. Waiver.

The failure of Pulse Secure to require Your performance of any provision of this Agreement shall not affect Pulse Secure's full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.

27. Translations.

Several translations of this Agreement may appear at <http://www.pulsesecure.net/support>. To the extent of any inconsistency between the English version of this Agreement and any non-English version the English version shall govern.

28. Definitions.

The following definitions apply to capitalized terms used this Agreement:

- "Agreement" means this End User License Agreement ("EULA").
- "Approved Source" is Pulse Secure, or a distributor or reseller authorized by Pulse Secure to distribute Software and Maintenance Services in the territory in which You are located.
- "Beta" is a version of the Software that (i) is still in its testing phase and has not yet been released commercially and (ii) Company agrees to provide feedback regarding use of and improvements to the Software.
- "Documentation" for a particular Software Version or Release means Pulse Secure's published User Guide, Release Notes and feature listings for that Version or Release.
- "License Metric" is a parameter for the access or use of the Software, as described in Section 5.

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- "License Metric Unit" is a unit of measurement for the number of seats for the License Metric that You purchased for access or use of the Software.
 - "Maintenance Services" for Software means the set of software maintenance services described in the Applicable SDD.
 - "NFR" means "Not for Resale" and is limited to demonstration use by a Reseller.
 - "Proof of Entitlement" is a Pulse Secure order confirmation or other Pulse Secure-issued written or electronic confirmation of Pulse Secure's grant to You of a license. The Proof of Entitlement must identify You, the Software licensed, any applicable License Metric and, if applicable, the License Metric Units. The Proof of Entitlement must also indicate whether the license is a Subscription, the term of the license and, if it is a Special Purpose License, the kind of Special Purpose License. If Your license is to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, proof of Your purchase of the Pulse Secure Platform on which the operating system software runs shall serve as Your Proof of Entitlement but only as long as You own or lease the Pulse Secure Platform.
 - "Pulse Secure" means Pulse Secure, LLC.
 - "Pulse Secure Platform" means any hardware router, switch or other network hardware, equipment or devices marketed and sold by Pulse Secure.
 - "Pulse Secure Policies" are Pulse Secure's then-current policies and procedures, which may be found at <http://www.pulsesecure.net/support>
 - "Release" is a particular object code image of a software product that is identified by a Release denomination starting with "x.y" followed by additional image identifying string.
 - "SDD" means the Service Description Document detailing Maintenance Services for the specific Software, which may be found at <http://www.pulsesecure.net/support>
 - "Software" means the software product identified in Your Proof of Entitlement, and includes 1) machine-readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated Documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription or contract for Maintenance Services.
 - "Special Purpose License" means any of the licenses described in Section 6 of the Agreement.
 - "Start Date" means the date of acceptance of this Agreement through use of the Software or otherwise.
 - "Subscription" means a license to Software for a finite, fixed term of use.
 - "Update" means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that Pulse Secure makes generally available free of incremental charge to customers purchasing a Subscription or contract for Maintenance Services.
 - "Version" means one or more Releases of a particular software product with a common "x.y" denomination in the first two places of the Release identifier.
 - "You" means the legal entity, or other business, governmental or not-for-profit organization (but excluding any parent, subsidiary or other affiliate of any of the foregoing) that (A) is the original end user purchaser of a license to the Software from an Approved Source, (B) accepts the terms of this Agreement, and/or (C) is identified as "Customer" or "End User" in the applicable Proof of Entitlement, if any.
 - END OF DOCUMENT-

Puppet Labs
926 NW 13th Avenue, #210
Portland, OR 97209

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached **Puppet Labs** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - ss) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - tt) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - uu) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - vv) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - ww) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - xx) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - yy) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - zz) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any

excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- aaa) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- bbb) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- ccc) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- ddd) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- eee) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- fff) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- ggg) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- hhh) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- iii) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- jjj) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- kkk) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- lll) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention

procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

mmm) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

nnn) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PUPPET LABS

PUPPET LABS LICENSE, WARRANTY AND SUPPORT TERMS

This Software License Agreement ("Agreement") is between Puppet Labs, Inc., a Delaware corporation, ("Puppet Labs") and the Ordering Activity, as defined by GSA Order ADM4800.2H and as revised from time to time ("Customer").

This Agreement includes the terms and conditions of the GSA Schedule Contract, the Order, and the terms and conditions below. It constitutes the complete agreement between the parties regarding the license, support and maintenance of Puppet Enterprise™ software (the "Software"), and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning that same subject matter. Any modifications to this Agreement must be in writing signed by a duly authorized representative of both parties. SHOULD A CONFLICT EXIST BETWEEN THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THE SCHEDULE CONTRACT, THE SCHEDULE CONTRACT SHALL PREVAIL.

TERMS AND CONDITIONS

1. **ORDERS.** "Order" means an order placed by an Ordering Activity under the GSA Schedule Contract.
2. **LICENSE.** Subject to Customer's compliance with this Agreement, Puppet Labs grants to Customer a worldwide, limited, non-transferrable, revocable license to use the Software for the purpose of managing Customer's IT infrastructure (whether on premises or in the cloud). Customer may reproduce the Software and use multiple copies concurrently, subject to the pricing terms of Section 6.
3. **SOURCE CODE.** The source code for the Software is available through www.puppetlabs.com.
4. **THIRD PARTY SOFTWARE.** The Software includes components that included under open source licenses from third parties (the "Third Party Software"). The components are listed at <http://www.puppetlabs.com/puppet-enterprise-components-licenses/>.
5. **RESTRICTIONS.** The Software is licensed, not sold. Customer may not use the Software other than for Customer's internal business purposes, and not for the purposes of any third party nor for any timesharing, rental, Internet, or application service provider, commercial hosting services, or service bureau basis. Other than as granted in Section 2, Puppet Labs and its licensors retain all right, title and interest in and to the Software, including all intellectual property rights, registered or unregistered, and wherever in the world those rights may exist (collectively, the "Puppet Labs Rights"). The Puppet Labs Rights include graphics, user and visual interfaces, design, structure, selection, coordination, expression, "look and feel", arrangement, trademark, logo and other distinctive brand features of the Software (collectively, the "Puppet Labs Marks"). This Agreement does not permit Customer to distribute any product or service using the Puppet Labs Marks, including in connection with any Open Source Components. Puppet Labs shall retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Puppet Labs.
6. **FEES AND PAYMENT.** Customer will pay a fee for a license subscription and for support and maintenance (per Section 7) based on the number of "Nodes" managed by the Software. A "Node" is a single network-connected device such as a server, desktop, or laptop (virtual machines that have a unique IP address are a separate Node from the physical machine on which they reside).

7. SUPPORT; CHANGES.
 - 7.1 Support and Maintenance. In connection with any Paid License, Puppet Labs will provide Customer the support and maintenance services ("Support Services") listed on Exhibit A, at either the "Standard" or the "Premium" level, as indicated in the Order. There is no support or maintenance available in connection with a Free License. If Support Services are terminated for any reason, any later reinstatement is at Puppet Labs' sole option, including without limitation the condition that Puppet Labs offers Support Services to its customers generally for the Software in question.
 - 7.2 Modules and Customer Changes. Puppet Labs makes available certain modules ("Modules") that may be used in connection with the Software, either bundled with the Software (including in an update or upgrade later provided) or through its web site forge.puppetlabs.com ("Puppet Forge"). Any Modules bundled with the Software are licensed under this Agreement, and any Modules obtained through the Puppet Forge are subject to their accompanying license. Except for Modules that are bundled with the Software or where otherwise indicated by Puppet Labs on the Puppet Forge, Puppet Labs is not liable to support any Module, nor are such Modules covered by the warranty and indemnity terms of this Agreement. Furthermore, to the extent permitted by law, Puppet Labs is not responsible to support, and is not liable under this Agreement in any way (including warranty and indemnity) for, any changes made by Customer to the Software.
8. WARRANTY; DISCLAIMER
 - 8.1 General Warranties. Puppet Labs represents and warrants that it has sufficient ownership or authority to grant to Customer the license stated in Section 2. Each party represents and warrants that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (b) it has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of this Agreement.
 - 8.2 Product Warranty. Puppet Labs warrants to the Customer that the Software will perform in all material respects as specified in its accompanying documentation under normal use for a period of thirty (30) calendar days from initial receipt or access. Customer's exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software and Puppet Labs, at its option, will replace it or refund any fee paid for the Software. This warranty applies to Third Party Software only to the extent its failure to operate causes the Software to fail to conform to this warranty.
 - 8.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8, PUPPET LABS DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE SOFTWARE, INCLUDING THE WARRANTIES OF NON-INFRINGEMENT, TITLE, AND THOSE THAT MAY ARISE FROM ANY COURSE OF DEALING OR PERFORMANCE. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 USC 7101-7109.
9. LIMITATION OF LIABILITY. EXCEPT AS STATED BELOW, EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED AS FOLLOWS: (A) NEITHER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, LOST DATA OR LOST SAVINGS); AND (B) NEITHER SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF FIVE HUNDRED DOLLARS (\$500) OR THE AMOUNTS PAID BY CUSTOMER TO PUPPET LABS IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THESE LIMITS DO NOT APPLY TO ANY LIABILITY THAT ARISES FROM ANY CLAIM FOR UNPAID FEES OR THE UNLICENSED USE OF THE SOFTWARE. THESE LIMITS APPLY REGARDLESS OF THE FORM OF CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS SECTION 9 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75—PRICE REDUCTIONS, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION).
10. EXPORT CONTROL. As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions.
11. GOVERNMENT USERS. The Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212

(Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

12. GENERAL. The laws of the United States govern this Agreement. Customer and Puppet Labs may only amend or modify this Agreement, or waive any right under this Agreement, in a writing that is signed by both parties and that expressly references this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, "includes" (or "including") means without limitation.

Exhibit A
Support and Maintenance Terms
Last Updated on January 15, 2014

These Support Services Terms describe the Support Services which current, compliant subscribers of Support Services are entitled to receive pursuant to the Software License Agreement between Puppet Labs and Customer ("Master Agreement"). These Support Services Terms form an integral part of, and are incorporated by reference into, the Master Agreement. Capitalized terms used in these Support Services Terms without definition have the meaning defined in the Master Agreement.

1. Definitions.

"Error" means a malfunction in the Software that can be duplicated by Puppet Labs that materially degrades the use or performance of the Customer business system the Software manages ("Business System").

"Fix" means the repair or replacement of object code versions of the Software to remedy an Error.

"Priority 1 Error" means an Error that renders the Software inoperative or materially degraded with respect to the Business System, such that: (i) the Business System's production system is severely impacted or completely shut down, or (ii) the Business System's system operations or mission-critical applications are down "Priority 2 Error" means an Error that degrades Software performance with respect to the Business System.

"Priority 3 Error" means an Error that affects Customer's use of the Software, but does not materially degrade Software performance with respect to the Business System.

"Technical Contact" means a Customer employee technically familiar and competent with Customer's systems (including the Business System), infrastructure and use of the Software, who: (i) has "read, write and execute" access to the necessary files, English language communication skills and relevant technical knowledge; and (ii) is the designated Customer contact to receive Support Services, and to resolve Customer technical issues related to the Software. The permitted number of Technical Contacts is based on the level of Support Services purchased by Customer, and is set forth in the table below. The first two (2) Technical Contacts are set forth in the applicable Order Form, and may be changed by Customer upon five (5) business days prior written notice to Puppet Labs.

"Update" means subsequent releases of the Software that are generally made available by Puppet Labs to those of its customers using the Software as part of Support Services at no additional charge, other than media and handling charges. Updates may include updated code to accommodate changes in applicable industry standards. Updates shall not include any releases, enhancements, functionality or products which Puppet Labs licenses separately or provides at a fee separate from the Support Services fee. Updates are delivered only on an as if and when available basis.

2. Support Services Coverage. Subject to these Support Services Terms, including the table set forth below, and the other terms of the Master Agreement (including, without limitation, Customer's payment of the applicable Support Services fees to Puppet Labs), Puppet Labs will provide Customer with the Support Services described herein for the applicable Software, exclusive of any integration issues between the Software and applicable Third Party Software. Customer shall designate the permitted number of Technical Contacts who are responsible for resolving user issues, and only such Technical Contacts may contact Puppet Labs for the provision of Support Services. Support Services do not include anything not set forth in these Support Services Terms, and specifically excludes support of any hardware or any software other than the Software, including without limitation, any integration with Third Party Software. The Support Services telephone numbers, email address and Puppet Labs Support Portal are located at <http://puppetlabs.com/services/customer-support>.

3. Software Maintenance. Puppet Labs will periodically, and in its sole discretion, provide Customer with Fixes to Errors and Updates to Software.

4. Customer Obligations. Customer and its Technical Contacts shall: (i) make reasonable efforts to resolve Customer issues or identify issues as relating to the Software prior to contacting Puppet Labs for Support Services; and (ii) provide Puppet Labs with sufficient information and resources to address the Error, and access to the personnel, hardware, and any additional software as reasonably necessary to enable Puppet Labs to reproduce, analyze and address the Error.

5. Exclusions. Puppet Labs is not obligated to provide Support Services when: (i) the Software has been changed, modified or damaged; (ii) the issue is caused by Customer's negligence, misuse of software or hardware, hardware malfunction or other causes other than the Software; (iii) the issue is caused by hardware, third party software or infrastructure; or (iv) the version of the Software is not a currently supported version, as determined by Puppet Labs' announced policies regarding the support of such versions.

6. Free Public Training. For Premium Support Services customers, during each yearly term of Premium Support Services, Puppet Labs offers upto four (4) placements per Support Services term in public classes offered by Puppet Labs at no additional cost to Customer. These free classes (i) are only offered to current Premium Support Services customers, (ii) must be given directly by Puppet Labs (and not a Puppet Labs training partner), (iii) must be taken during the current Support Services term, and (iv) expire at the end of the current Support Services term and Customer is not entitled to any compensation if the classes are not used. The four (4) class sessions may be taken by up to four individuals, but in no event will Customer receive more than four (4) individual free class sessions per Support Services term (e.g. one individual may take four class sessions or four individuals may each take one class session).

Support Services		
	Standard	Premium
Hours of Coverage	Business Hours (6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays)	24 x 7 x 365 for Priority 1 issues. All other issues: 6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US
Email Support	Yes	Yes
Puppet Labs Support Portal	Yes	Yes
Phone Support	No	Yes

Support Channel	Email support, access to Puppet Labs Support Portal	Email support, phone support, access to Puppet Labs
Number of Cases or Incidents/month	5	Unlimited
Technical Contacts	Up to 4	Unlimited
Feature Request Priority	No	Yes
Updates to the Software	Yes	Yes
Free Public Training	None	For up to 4 Engineers
Response Guidelines		
Priority 1 Error	1 Business Hour	1 Clock Hour (Initial Contact must be via Phone)
Priority 2 Error	4 Business Hours	4 Business Hours
Priority 3 Error	12 Business Hours	12 Business Hours

Qualtrics, LLC
400 Qualtrics Drive, #100
Provo, UT 84604

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Qualtrics, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

QUALTRICS, LLC

QUALTRICS, LLC LICENSE, WARRANTY AND SUPPORT TERMS

1.0 Background

Contractor through Qualtrics will provide the Qualtrics Service to Ordering Activity ("Licensee") as an end user customer. Qualtrics will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably required to provide the Qualtrics Service to Licensee. The Qualtrics Service shall be hosted on Qualtrics' servers. Qualtrics may, at its election, outsource the hosting to a trusted third party in the business of hosting Internet services and/or applications.

2.0 License of Qualtrics Service

Contractor grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Delivery Order, to use the Qualtrics Service for Licensee's own internal business purposes.

- 2.1** Access: During the term of the Delivery Order, provided that Licensee has paid all fees due and owed to Contractor and is in compliance with the terms of this Attachment A, Licensee will be able to access the Qualtrics Service by going to the web site specified in Exhibit 1. The Qualtrics Service will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the Qualtrics Service.
- 2.2** Unauthorized Duplication or Use: Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the Qualtrics Software or using the Qualtrics Service in violation of this Attachment A. If Licensee discovers any such unauthorized duplication or use, it will promptly notify Contractor through Qualtrics and take commercially reasonable actions to resolve the problem as soon as reasonably possible.
- 2.3** Restrictions: Licensee is not permitted to sublicense the Qualtrics Software to third parties without written permission of Qualtrics except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

3.0 Support and Maintenance

In consideration of the fees paid by Licensee, as part of the Qualtrics Services, Contractor through Qualtrics will provide the following support and maintenance services:

- 3.1** Technical Support: Contractor through Qualtrics shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the Qualtrics Service, including the Software. Licensee may telephone or e-mail Qualtrics' offices for support during Qualtrics' regular business hours, 6:00 p.m. Sunday to 6:00 p.m. Friday U.S. Mountain Time (0100 Monday to 0100 Saturday GMT), except U.S. holidays. Qualtrics will respond to telephone calls or e-mails based on the following criteria: (a) the order that such calls or e-mails are received; and (b) the relative importance of such calls or e-mails as reasonably determined by Qualtrics. Qualtrics shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with Qualtrics in providing such documentation and information as Qualtrics may reasonably request, so that Qualtrics can verify and reproduce the reported error. Additionally, Licensee may log on to the support web site to register e-mail requests.
- 3.2** Modifications and Enhancements: Contractor through Qualtrics may also make modifications to the Qualtrics Service to improve and enhance the Qualtrics Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees' feedback and requests. Qualtrics will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Attachment A at no additional charge. Licensee may also utilize Qualtrics' support web site to make enhancement requests and other special requests.

4.0 Account Managers

Each party shall appoint an Account Manager, as set forth on the signature page. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Qualtrics Service. Either party may change its Account Manager upon written notice to the other party.

5.0 Ownership

Subject to the licenses and rights granted herein, the parties acknowledge that:

- 5.1 As between the parties, Qualtrics owns all right, title and interest in and to the Qualtrics Service, all related software and technology, and all Qualtrics content provided in connection with the Qualtrics Service, including all intellectual property rights in the foregoing. Qualtrics reserves all rights not expressly granted to Licensee in this Attachment A.
- 5.2 Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey recipients in the surveys conducted through the Qualtrics Service ("Data") including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee's survey recipients and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of the Schedule Contract and shall not be utilized by Qualtrics for any purpose other than to perform its obligations under this Attachment A or as agreed to in writing by an authorized representative of Licensee.

6.0 Term and Termination

- 6.1 Term: The initial term of a Delivery Order is one (1) year from the Effective Date. A Delivery Order may be renewed for additional one (1) year term upon mutual agreement in writing.
- 6.2 Effect of Termination: Upon termination of the Delivery Order for any reason, Contractor through Qualtrics shall discontinue providing the Qualtrics Service to Licensee and Licensee shall cease using the Qualtrics Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in section of the Schedule Contract. Within thirty (30) days of the date of termination, Licensee shall pay to Contractor all outstanding undisputed fees due to Contractor as of the effective date of termination. For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of the Delivery Order shall survive.

7.0 Representations and Warranties

- 7.1 By Contractor: Contractor represents and warrants to Licensee that:
 - (a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Contractor is bound;
 - (b) it will comply with the laws, rules and regulations that apply to Contractor in connection with the conduct of its business and its provision of the Qualtrics Service;
 - (c) it will not knowingly infringe on any party's patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any laws, rules, or regulations applicable to Qualtrics or the Qualtrics Service; and
 - (d) it will use commercially reasonable efforts to allow Licensee to access the Qualtrics Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the Qualtrics Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee's system, or (iii) due to other causes outside of the reasonable control of Qualtrics, including without limitation malfunction or cessation of Internet services by any third party network or ISP.
 - (e) it will use commercially reasonable efforts to ensure that updates and/or new releases will not introduce, any program, routine, subroutine, or data (including malicious software or "malware," viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.
 - (f) to the best of Contractor's knowledge, it shall not violate the software as delivered to the Licensee shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which Contractor may have or with any third party, or violate the privacy of any third party from whom Contractor through Qualtrics may obtain any information in connection therewith.
- 7.2 By Licensee: Licensee warrants and represents to Contractor that:
 - (a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Licensee is bound;

(b) it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the Qualtrics Service; and

(c) it will not knowingly utilize (or allow utilization of) the Qualtrics Service in any manner prohibited by this Attachment A or written Qualtrics policies provided to Licensee, or reverse engineer or tamper with the security of any Qualtrics computer software.

7.3 Limitation of Warranties: EXCEPT AS SET FORTH IN THIS SECTION 7, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY CONTRACTOR ON AN "AS IS" BASIS. CONTRACTOR DOES NOT WARRANT THAT THE QUALTRICS SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. CONTRACTOR DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS ATTACHMENT A, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

Exhibit 1

1. **QUALTRICS SERVICE:** Develop and host the survey website which includes all survey development tools, e-mail delivery capabilities, online analysis tools, online survey libraries, tutorials and help facilities.
2. **SCOPE OF LICENSE:** The term of the license for the Qualtrics Software is one year, beginning on the date below and includes features as outlined below.
3. **SUPPORT AND TRAINING:** Contractor through Qualtrics will provide online tutorials, phone support and respond to e-mails during normal business hours. Qualtrics will provide a U.S. toll free number that may be used for contacting Qualtrics regarding support issues. As each survey project tends to be uniquely structured the majority of training will occur through telephone and e-mail support. Quarterly training calls may also be scheduled by the Qualtrics Account Manager to discuss and/or demonstrate new features that have been made available by Qualtrics.
4. **BRANDED SURVEY SITE:** This license will operate under a branded platform, which will be created by Qualtrics. The cost of this branded platform is included in the bid. Any changes to the site and domain are also included in the bid.
5. **SKINS TO MATCH:** The corporate branded solution comes with skins in a library that can be used to change the look and feel of a survey. Licensee will have the ability to request new skins that will fit their branding.
6. **REQUESTS:** A "Request" is a server call sent to Contractor through Qualtrics that occurs each time a site intercept code is triggered. Qualtrics will provide information on the number of requests to Licensee each month. In the event Licensee exceeds the number of allotted Monthly Requests by fifty percent (50%), or in the event Licensee exceeds the number of allotted Yearly Requests, Licensee must pay the overage at the current order rate.
7. **DISTRIBUTION OF USERNAMES AND PASSWORDS:** Contractor through Qualtrics will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.

Red Hat, Inc.
1801 Varsity Drive
Raleigh, NC 27606

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Red Hat, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

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- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

RED HAT, INC.

RED HAT, INC. LICENSE, WARRANTY AND SUPPORT TERMS

This U.S. Government Supplement ("Supplement") and the Red Hat Enterprise Agreement (www.redhat.com/licenses/us.html), including its Appendix 1 (http://www.redhat.com/licenses/rhel_us_appendix1.pdf) (Note: Red Hat Learning Services, Training Units, and Consulting Units under Appendix 2, http://www.redhat.com/licenses/rhel_us_appendix2.pdf, are not provided under GSA contracts) ("Enterprise Agreement"), establish the terms and conditions enabling Red Hat, Inc. ("Red Hat") to provide Red Hat Products to U.S. Government agencies, including any "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM (the "Client"). The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follow:

1.0 Enterprise Agreement Section 2.2, Changes to Work and Delays, is replaced with the following: "2.2 Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.243-72 Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987). In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010).

2.0 Enterprise Agreement Section 3.0 Fees:

The following is deleted from Section 3.1, Fees and Expenses: "Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services."

Section 3.2.1 is replaced with the following: If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order in accordance with FAR 52.212-4(g) and FAR 52.212-4(i). Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable.

Section 3.3, Taxes, is deleted in its entirety.

3.0 Enterprise Agreement Section 5.0, Reporting and Inspection:

The following is deleted from Enterprise Agreement Section 5.1, Reporting, "no later than thirty (30) days from the date of the invoice", and replaced with, "as provided in the Agreement".

Enterprise Agreement Section 5.2, Inspection, is replaced with the following: "5.2 Inspection. During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Client security requirements are not met and upon Red Hat's request, Client will run a self assessment with tools provided by and at the direction of Red Hat ("Self Assessment") to verify Client's compliance with this Agreement. Within thirty (30) days from Red Hat's request, Client will finalize the Self Assessment and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Client will make payment to Red Hat or its authorized channel partner for the applicable Services provided with respect to the underreported Units. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

4.0 Enterprise Agreement Section 6, Term and Termination:

Enterprise Agreement Section 6.1 is replaced with the following: "6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of all Order Forms issued hereunder."

Enterprise Agreement Section 6.2.1: The following is deleted: "Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term."

Enterprise Agreement Section 6.2.2 is replaced with the following: "6.2.2 Termination shall be governed by the FAR 52.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat and consistent with FAR 52.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination."

5.0 Enterprise Agreement Section 8.1: The following is added to Section 8.1, Limitation of Liability: "..., EXCLUDING REPROCUREMENT COSTS. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733."

6.0 Enterprise Agreement Section 9.1: The following is added to Section 9.1, Obligations: "Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552."

7.0 Enterprise Agreement Section 11, Open Source Assurance Program, is deleted in its entirety.

8.0 Enterprise Agreement Section 12, Governing Law/Consent to Jurisdiction, is replaced with the following: "12. Governing Law/Consent to Jurisdiction. The validity, interpretation and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted."

9.0 Enterprise Agreement Section 13 Miscellaneous

Enterprise Agreement Section 13.2, Assignment is replaced with the following: "13.2 Assignment. Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements."

Enterprise Agreement Section 13.4, Force Majeure is replaced with the following: "13.4 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010)."

Enterprise Agreement Section 13.5, Non-solicitation, is replaced with the following: "13.5 Reserved."

The third and fourth sentences of Section 13.6, Export and Privacy, are deleted in their entirety.

The following is deleted from Enterprise Agreement Section 13.7, Dispute Resolution, "No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.", and replaced with, "No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued."

The following is deleted from Section 13.11, Complete Agreement, "of the State of New York and".

10.0 Enterprise Agreement Section 14, Waiver of Jury Trial, is deleted in its entirety.

11.0 The second paragraph of Appendix 1, Exhibit 1.C, Section 1. is replaced with the following: "If you use any of the Subscription Services or Software associated with JBoss Developer Studio Portfolio Edition for Production Purposes, or use the Red Hat Enterprise Linux Software Subscription entitlement independently of your use of the JBoss Developer Studio Subscription, you will be required to purchase the applicable number of Units of the applicable Software Subscription. Red Hat does not provide Production Support or Development Support for JBoss Developer Studio Portfolio Edition."

12.0 Red Hat Products purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by "terms of use" (e.g. https://access.redhat.com/site/help/terms_conditions.html) ("Red Hat Portal Terms of Use"). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.

RedOwl Analytics, Inc.
1111 Light Street, Suite 250
Baltimore, MD 21230

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached RedOwl Analytics, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

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- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A – REDOWL ANALYTICS
MASTER LICENSE AND SERVICES AGREEMENT

This MASTER LICENSE AND SERVICES AGREEMENT (this "Agreement") is made and entered into effective as of the ____ day of _____, 201__ (the "Effective Date"), by and between RedOwl Analytics, Inc., a Delaware corporation having its principal place of business at 1111 Light Street, Suite 250, Baltimore, Maryland 21230 ("RedOwl"), and _____ having its principal place of business at _____ ("Customer").

RedOwl and Customer desire to establish terms and conditions under which Customer is authorized to license software and purchase services from RedOwl.

In consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, intending to be legally bound, covenant and agree as follows:

1. Definitions

Capitalized terms used in this Agreement are defined in this Section 1 or the section in which they are first used.

- 1.1** "Agreement" means this Master License Agreement and Services Agreement, including any Order Form(s), Exhibit(s) or Attachment(s) attached hereto or which reference this Agreement.
- 1.2** "Ordering Activity Data" means all data and information provided by Ordering Activity that is: (i) input into or processed by the Software; (ii) all output therefrom; and (iii) any Ordering Activity information or data developed or derived from the data provided by Ordering Activity.
- 1.3** "Deliverable(s)" means a deliverable created by RedOwl pursuant to a Statement(s) of Work under the Professional Services Terms.
- 1.4** "Documentation" means the standard documentation for the Software as provided by RedOwl upon Ordering Activity's download, installation or access to the Software, excluding any RedOwl sales or marketing materials.
- 1.5** "Environment" means the environment in which the Software may be used, as designated in the Order Form, whether that environment is on Ordering Activity's premises, in a public or private cloud, in a virtual private cloud or in another operating environment.
- 1.6** "Error" is as defined in the Support Services Terms.
- 1.7** "Machines" means the number of named physical or virtual machines that are running the Software as such number is specified in the Order Form.
- 1.8** "New Version" is as defined in the Support Services Terms.
- 1.9** "Order Form" means an order form that references this Agreement which is executed by RedOwl and Ordering Activity, issued by Ordering Activity, evidencing a subscription to the Software and Support Services and the fees for such.
- 1.10** "Order Form Effective Date" means the date specified at the top of the applicable Order Form, which indicates the date the Order Form is effective between the parties.
- 1.11** "Professional Services" means collectively the professional services (including any Training) provided by RedOwl to Ordering Activity pursuant to the Professional Services Terms.
- 1.12** "Professional Services Terms" means the terms set forth to govern the Professional Services as set forth in Exhibit B.
- 1.13** Reserved.

- 1.14** “Services” means the Support Services and Professional Services provided pursuant to this Agreement by RedOwl.
- 1.15** “Software” means RedOwl’s proprietary information technology software (in object code form) as specified in the Order Form, including Updates and New Versions, and any Documentation provided therewith.
- 1.16** “Subscription Model” means the licensing model under which Ordering Activity has elected a subscription license for the Subscription Term (i) to the Software as downloaded by Ordering Activity from RedOwl and the Support Services provided therewith, or (ii) to the Software which Ordering Activity is given access by RedOwl (but which remains on RedOwl’s servers) and the Support Services provided therewith.
- 1.17** “Statement of Work” or “SOW” means a separate document executed by RedOwl and Ordering Activity that references this Agreement and specifies the Professional Services to be performed.
- 1.18** “Subscription Term” the term of the subscription to the Software and Support Services pursuant to the Subscription Model as such term is set forth on the Order Form.
- 1.19** “Support Services” means the maintenance and support services for the Software made commercially available by RedOwl as set forth in the Support Services Terms.
- 1.20** “Support Services Terms” means the terms that govern the Support Services as set forth in Exhibit A.
- 1.21** “Training” means the instruction provided by RedOwl with respect to the Software, as further defined in the Professional Services Terms and Statement of Work.
- 1.22** “Update” is as defined in the Support Services Terms.
- 1.23** “User” means the user(s) or items authorized to be monitored by the Software as such number is specified in the applicable Order Form.

2. Operational Terms

- 2.1** Reserved.
- 2.2** Reserved.
- 2.3** Delivery. RedOwl will promptly deliver the Software to the Environment where the Software is to be installed or deliver a link to Ordering Activity for its access to the Software. The Software will be deemed accepted by Ordering Activity upon delivery to the Environment or upon delivery of the link to Ordering Activity.
- 2.4** Installation and Conversion of Ordering Activity Data. Except as specified in the Order Form, Ordering Activity shall be solely responsible for (i) installation and configuration of the Software in the Environment, (ii) any conversion of Ordering Activity Data required to make such data compatible with the Software, and (iii) subject to Government security policies, providing RedOwl access to and a license to use the Ordering Activity Data as necessary to fulfill RedOwl’s obligations under this Agreement. If the parties agree that RedOwl is to perform installation and configuration services, such shall be considered Professional Services hereunder and Ordering Activity shall issue an Order Form for such professional Services.
- 2.5** Hosting. RedOwl and Ordering Activity agree that the Software will initially be installed and operated on systems owned or controlled by Ordering Activity (including through a third party service provider). In the event that the parties thereafter decide that RedOwl shall host and operate the Software on behalf of Ordering Activity on systems owned or controlled by RedOwl (including through a third party service provider), then the parties agree to execute a hosting addendum.

3. License

- 3.1** License Grant to Software. Subject to the Subscription Model and the terms and conditions of this Agreement, during the Subscription Term, RedOwl hereby grants to Ordering Activity a non-exclusive, nontransferable, non-assignable, non-sublicensable license to use the Software in accordance with the Users and/or Machines in the Environment solely for the purpose of analyzing the Ordering Activity Data and rendering reports of the results of such analysis to Ordering Activity for Ordering Activity’s sole benefit.
- 3.2** License Restrictions to Software. Each license granted under Section 3.1 is subject to the restrictions below. Without limiting the foregoing Ordering Activity shall not: (i) modify, adapt, alter, publicly display, publicly perform, translate or create derivative works of the Software; (ii) distribute, sell, sublicense, lease, rent, loan or otherwise transfer the Software to any third party or use the Software for the benefit of any third party; (iii) reverse engineer, decompile, reverse compile, translate, adapt or disassemble or in any way attempt to reconstruct or discover any

source code or algorithms of the Software; (iv) disclose, outside of Ordering Activity, any performance information or analysis (including without limitation benchmarks) from any source relating to the Software or publish any information derived from the Software; (v) use the Software for any timesharing or service bureau purposes; (vi) remove, alter or obscure any proprietary notices on the Software; (vii) use the Software in any manner other than as described in the Documentation, this Agreement, or in excess of the license parameters set forth in the Order Form; (viii) use the Software or any component or any information derived therefrom to create a competitive product or service; or (ix) allow any third party (including any hosting service) to do any of the foregoing.

- 3.3** Access to Information from Ordering Activity's Use of the Software. During the term of this Agreement, RedOwl reserves the right to request from Ordering Activity any logs, reports, data or additional information in order for RedOwl to ensure the Software is functioning properly, improve the Software, and ensure Ordering Activity is using the Software only in environments supported by RedOwl. RedOwl may, upon Ordering Activity's consent, access the foregoing information directly. In any event upon RedOwl's request for such information, Ordering Activity will promptly supply such data or other information requested by RedOwl as it relates to this section.
- 3.4** License to Use Text. During the term of this Agreement, Ordering Activity hereby grants to RedOwl a non-exclusive license to use any disclaimer text as included in emails ingested by the Software (such as text included at the bottom of an email that states "important notice," "confidential and proprietary information," etc.) for the purpose of improving and developing the functionality of the Software and to ensure that such information is eliminated from that which is analyzed by the Software.
- 4.** Support Services. RedOwl shall provide the Support Services for the Software specified in the Order Form in accordance with the Support Services Terms. If the Software includes any supplier components, such suppliers shall not provide any support or maintenance services for such components under this Agreement.
- 5.** Professional Services. Ordering Activity will be responsible for configuring and installing the Software in its Environment and learning to use the Software, unless Ordering Activity has purchased Professional Services. RedOwl will provide Professional Services in accordance with the Professional Services Terms set forth in Exhibit B and the applicable Order Form and Statement of Work.
- 6.** Fees and Payment
- 6.1** Reserved.
- 6.2** Support Services Fees. For the Subscription Model the Support Services for the Software are included in the subscription fees for such, and no additional Support Services fees are due. Support Services shall commence on the Effective Date (or such other date specified in the Order Form) and may be renewed annually as part of the subscription at the option of the parties.
- 6.3** Professional Services Fee. For any Professional Services, Ordering Activity shall pay the fees as specified in the Order Form.
- 6.4** Payment. Payment of all fees due hereunder shall be made within thirty (30) days after the date of invoice, unless otherwise agreed in the Order Form or Statement of Work. All payments must be made in U.S. Dollars.
- 6.5** Taxes. RedOwl shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) to you or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- 6.6** Reserved.
- 6.7** Audit Rights. During the term of this Agreement and for twelve (12) months thereafter, RedOwl (or a third party auditor designated by RedOwl and reasonably acceptable to Ordering Activity) may audit Customer's facilities and records to ensure that Customer's use of the Software is in compliance with this Agreement. Any such audit will be conducted during normal business hours, subject to applicable Government security requirements and only upon at least ten (10) days prior written notice. If the audit reveals any usage in excess of that which is authorized under the applicable Order Form, Customer shall pay all fees related to such excess usage within thirty (30) days of receiving an invoice for the excess usage fees.
- 7.** RedOwl Intellectual Property. As between the parties, the Software and Deliverables, including, but not limited to, copyrights, trade secrets, trademarks, service marks, patents, modifications, improvements and all other software, data, content, user interface, analytics, reports and outputs, documentation, manuals, notes, supporting information, any other digital information that RedOwl provides to Ordering Activity, and all intellectual property rights related thereto and therein are the exclusive property of RedOwl. Except for the rights expressly granted by RedOwl to Ordering Activity under this Agreement, (i) RedOwl (and its suppliers) reserves all right, title and interest in and to the Software, the Deliverables, all intellectual property named above and the rights therein, whether created before or during the course of this Agreement and any new intellectual property created and/or provided to Ordering Activity hereunder, and (ii) no right, title, ownership interest in or to the Software (including that which is provided under the Support Services), the Deliverables, or other intellectual property whether by implication, estoppel or otherwise, is granted, assigned or transferred to Ordering Activity under or in connection with this Agreement. Ownership of derivative works should be as set forth in the copyright statute.

17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

8. Ordering Activity Data. Ordering Activity agrees that it shall provide Ordering Activity Data to RedOwl only to the extent such data is necessary for RedOwl to perform its obligations under this Agreement. Upon Ordering Activity's request, RedOwl shall deliver to Ordering Activity a copy of all Ordering Activity Data in RedOwl's possession or control in a mutually agreed, commercially reasonable, and readily accessible format.

9. Reserved.

10. Representations and Warranties; Disclaimer

10.1 Ordering Activity Warranties. Ordering Activity represents and warrants that it owns the Ordering Activity Data or has obtained all applicable permissions, authorizations, or licenses from each of its data sources or systems and has all rights that are or may be necessary for Ordering Activity to provide the Ordering Activity Data hereunder and for Ordering Activity and RedOwl to use such in connection with and as contemplated under this Agreement. RedOwl disclaims any responsibility or liability for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use the Ordering Activity Data.

10.2 RedOwl Warranties. RedOwl warrants to Ordering Activity that, for a period of ninety (90) days from the Effective Date (the "Warranty Period"), the Software, when used as permitted under this Agreement and in accordance with the Documentation, will operate in substantial conformity with the Documentation. RedOwl's sole liability (and Ordering Activity's sole and exclusive remedy) for any breach of this warranty shall be, in RedOwl's sole discretion, to replace the non-conforming Software or use commercially reasonable efforts to correct the nonconformity; provided that RedOwl is notified in writing of such non-conformity within the Warranty Period. This warranty shall not apply if: (i) the Software is used outside the scope of this Agreement or used inconsistently with the Documentation; (ii) the Software is modified or altered in any way except by RedOwl; or (iii) any nonconformity in the Software is due to misuse of the Software by Ordering Activity. Any replacement or Error correction will not extend the original Warranty Period.

10.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 10, THE SOFTWARE, SERVICES, AND ANY OTHER DELIVERABLES OR MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS," AND REDOWL MAKES NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, REDOWL EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RESULT, EFFORT, TITLE AND NON-INFRINGEMENT. REDOWL DOES NOT WARRANT THAT THE SOFTWARE, SERVICES, DELIVERABLES, OR ANY OTHER MATERIALS WILL BE PROVIDED ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL FULFILL ORDERING ACTIVITY'S REQUIREMENTS. ORDERING ACTIVITY ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN SECTION 10 AND THAT NO WARRANTIES ARE MADE BY ANY OF REDOWL'S SUPPLIERS OR CONTRACTORS. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT THE PRICES OFFERED UNDER THIS AGREEMENT REFLECT THESE NEGOTIATED WARRANTY PROVISIONS. TO THE EXTENT THAT REDOWL CANNOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW.

11. Indemnification

11.1 RedOwl Indemnification. Subject to Sections 11.2 and 11.3, RedOwl will (i) defend and/or settle at its own expense any action brought against Customer by a third party, to the extent that such action is based on a claim that the Software infringes such third party's U.S. patents or Berne Convention copyrights existing as of the Effective Date, and (ii) indemnify Ordering Activity for those costs and damages finally awarded against Ordering Activity in any such action that are attributable to such claim, or those costs and damages agreed to in a monetary settlement of such claim. The foregoing obligations are conditioned on Ordering Activity: (a) promptly providing RedOwl with written notice of any claim; (b) giving RedOwl control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at RedOwl's request and expense, assisting in such defense. Customer may, at its expense, participate in such defense if it chooses. RedOwl will not reimburse Customer for any expenses incurred by Customer without the prior written approval of RedOwl. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

11.2 Infringement Remedy. If the Software becomes, or in RedOwl's opinion is likely to become, the subject of an infringement claim that RedOwl is required to defend pursuant to Section 11.1, then RedOwl may (at its option and expense) either (i) procure for Customer the right to continue using the affected Software, or (ii) replace or modify the affected Software so that it becomes non-infringing. In the event RedOwl is unable to do that which is specified in subsections (i) or (ii), RedOwl may, with the consent of Ordering Activity, terminate Ordering Activity's license to the infringing Software and refund Ordering Activity for the unused portion of the license.

SECTIONS 11.1 AND 11.2 STATE REDOWL'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS AND ACTIONS RELATED TO INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

11.3 Exclusions. Notwithstanding the foregoing, RedOwl will have no obligation under this Section 11 or otherwise with respect to any infringement claim to the extent based upon: (i) any use of the Software not in accordance with this Agreement or the Documentation; (ii) any use of the Software in combination with other products, equipment, software or data not provided by RedOwl; (iii) any use of any release of the Software other than the most current release made available to Customer; (iv) any modification of the Software by any person or entity other than RedOwl; (v) any use of the Software after RedOwl has either made available to Customer a release that would have overcome the infringement or has terminated Customer's right to use the Software pursuant to Section 11.2; (vi) any intellectual property owned or licensed by Customer; or (vii) open source software.

12. Reserved.

13. Term and Termination

13.1 Term. The term of this Agreement will begin on the Effective Date and will continue until the date of termination stated on the Purchase Order.

13.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, RedOwl shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

13.3 Effects of Termination. Upon expiration or termination of this Agreement for any reason, all rights and obligations under this Agreement shall terminate except as specifically provided under this Section 13.3, and Customer shall immediately pay all amounts owed to RedOwl under this Agreement prior to such expiration or termination and shall immediately cease any use of the Software or services provided thereby and, at RedOwl's option, either return or destroy such Software (and all copies thereof) with a certificate of such return or destruction. Customer will also return to RedOwl all Confidential Information obtained during the course of this Agreement. In addition, within ten (10) days after the expiration or termination of this Agreement or Customer's written request at any other time, RedOwl shall permanently delete all copies of the Customer Data in RedOwl's possession or control and certify in writing to Customer that it has fully complied with the requirements set forth herein. Sections 1, 6, 7, 9, 10, 11, 12, 13.3 and 14 will survive the expiration or termination of this Agreement for any reason.

14. General

14.1 Notices. All notices under this Agreement must be delivered in writing in person, by courier, by facsimile or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving written notice of the new address to the other party.

14.2 Security. RedOwl shall employ commercially reasonable measures designed to ensure the security of the Ordering Activity Data (including, without limitation, encrypting all Ordering Activity Data using commercially reasonable industry practices). In addition, Ordering Activity understands that it is responsible for maintaining appropriate security, protection and backup of the Ordering Activity Data. Ordering Activity agrees that any log-in credentials and private keys generated hereunder are for Ordering Activity's internal use only, and Ordering Activity may not sell, transfer or sublicense them to any other entity or person.

14.3 Compliance with Export Control Laws. Ordering Activity acknowledges and agrees that it will comply with all applicable export and import control laws and regulations of the United States and foreign jurisdictions in which the Software and Deliverables are used and, in particular, Ordering Activity will not export or re-export the Software or Deliverables without all required United States and foreign government licenses. .

14.4 U.S. Government End Users. The Software and each Deliverable is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software and Deliverables with only those rights set forth under this Agreement. This section is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

**15. EXHIBIT A to
the MASTER
LICENSE AND
SERVICES
AGREEMENT**

1. Definitions

Capitalized terms used in these Support Services Terms are defined in the Master License and Services Agreement, this Section 1 or the Section in which they are first used.

- 1.1** "Error" means any Severity 1, 2, 3, or 4 error as defined herein.
 - 1.2** "New Version" means any upgrade, major release or new version of the Software for which RedOwl charges separately.
 - 1.3** "Severity 1 Error" means an Error that impacts the critical functions of the Software so that basic system functions cannot be performed, the Software is not operational, Ordering Activity is unable to perform tasks, and no workaround is available.
 - 1.4** "Severity 2 Error" means an Error that disables major functions in the Software and which may be repetitive in nature and impacts timely performance of tasks; Software functions are impacted, and Ordering Activity's ability to perform tasks is significantly impeded; no workaround is available.
 - 1.5** "Severity 3 Error" means an Error that disables only certain nonessential functions in the Software as described in the Documentation; impact is confined to inconvenience and negligible impact on the ability to perform tasks, and Ordering Activity can still perform basic functions; and a reasonable workaround will be provided if available.
 - 1.6** "Severity 4 Error" means an enhancement request, Documentation Error or minor flaw in the Software.
 - 1.7** "Severity Level" means the severity level 1, 2, 3, or 4 assigned to an Error.
 - 1.8** "Support Hours" means Monday through Friday 8 a.m. – 6 p.m. Eastern Standard Time (excluding holidays).
 - 1.9** "Update" means any Error correction, workaround, or other update that RedOwl makes generally commercially available to customers that have purchased Support Services; updates do not include any New Version or custom development.
- 2.** Support Coordinators. Ordering Activity shall designate up to two (2) support coordinators to receive and coordinate the Support Services provided herein (each a "Support Coordinator"). If requested by RedOwl, each Support Coordinator shall attend Software training sessions required by RedOwl. Ordering Activity's support inquiries shall only be initiated by the Support Coordinators specified in the Order Form. Support Coordinators may be amended from time to time upon written notice to RedOwl.
- 3.** Supported Software. RedOwl will provide Support Services for the most current version of the Software generally commercially released by RedOwl and the immediately prior version of the Software. All versions of the Software will be supported for a minimum of twelve (12) months following release ("Supported Software"). For purposes of this Section 3, version is defined as a change of the tenths place of the version number (i.e. a change from 4.0 to 4.5 constitutes a new version whereas a change from 4.5 to 4.5.1 does not).
- 4.** Maintenance. RedOwl will provide Updates for the Supported Software during the Subscription Term.
- 5. Error Correction**
- 5.1** Service Levels. When a Support Coordinator notifies RedOwl of a suspected Error in the Supported Software, Ordering Activity shall provide RedOwl with sufficient information to (i) reproduce and verify the Error, and (ii) enable RedOwl to assign a Severity Level to the Error ("Error Report"). Ordering Activity shall make reasonable efforts to confirm that the Error is caused by the Supported Software and not by any other hardware or software used by Ordering Activity. Upon receipt of an Error Report, RedOwl shall reasonably assign a Severity Level to such Error and shall use commercially reasonable efforts to respond to such Error in accordance with the service levels set forth in Attachment 1 to Exhibit A.
 - 5.2** Exclusions. RedOwl will have no obligation to correct Errors caused by: (i) improper installation of the Supported Software; (ii) altered or modified Supported Software, unless altered or modified by RedOwl; (iii) use of the Supported Software in a manner inconsistent with the Documentation; (iv) any combination of the Supported Software with hardware or software not specified in the Documentation; (v) defects in Supported Software due to accident, hardware malfunction, abuse or improper use; or (vi) versions of Software other than the Supported Software.
 - 5.3** Additional Services. If Ordering Activity requests that RedOwl provide services in connection with the exclusions specified in Section 5.2 or services that are otherwise outside the scope of these Support Services Terms, RedOwl, at its discretion and subject to its available resources, may elect to provide such services on a time-

and materials basis at RedOwl's then-current GSA rates and Ordering Activity shall issue a separate Order Form for such services.

- 5.4** Ordering Activity Obligations. As a condition to RedOwl's Support Services obligations, Ordering Activity must: (i) assist RedOwl in identifying and correcting Errors; (ii) execute reasonable diagnostic routines in accordance with instructions provided by RedOwl (and inform RedOwl of the results of such tests); (iii) ensure that the Support Coordinators are sufficiently qualified and familiar with the Supported Software and Ordering Activity systems so as to provide RedOwl with reasonable assistance in diagnosing and addressing Errors; and (iv) provide reasonable access to the Supported Software as requested by RedOwl for diagnostic and maintenance purposes, including remote access.

- 6.** Reserved.

16. ATTACHMENT 1 to EXHIBIT A to the MASTER LICENSE AND SERVICES AGREEMENT

1) Resolution Procedures

When Ordering Activity reports an Error, RedOwl will:

- Analyze the problem and determine case priority with Ordering Activity.
- Work with internal resources to identify and fix the Error.
- Keep up-to-date status information.
- Provide problem resolution to Ordering Activity in form of additional product information, a patch or a workaround.
- Follow-up with Ordering Activity.
- Make available all relevant commercially available Updates.
- Provide Professional Services at current GSA rates as requested and purchased by Ordering Activity.
- Schedule conference calls with Ordering Activity to discuss any possible Errors, solutions and additional features.

2) Response and Resolution Schedule

RedOwl will analyze each Error and assign a Severity Level. RedOwl will respond to each Error as defined below and will provide an action plan in the stated time assuming RedOwl support personnel can establish contact with Ordering Activity after the initial report.

Severity 1 Error

Response and Resolution:

For a Severity 1 Error, RedOwl shall provide:

- An initial response within four (4) hours from the time RedOwl becomes aware of the Error during Support Hours.
- Periodic reports on the status of correcting such Error until a patch or workaround has been provided to Ordering Activity.
- A plan for resolution within one (1) business day of the time RedOwl becomes aware of the issue.
- RedOwl will make commercially reasonable efforts to resolve this issue in the shortest amount of time possible including, but not limited to sending RedOwl engineers onsite to trouble shoot the problem and delivery of a patch release to resolve the issue.
- A resolution for the issue in the next release of the Software to the extent that this is commercially feasible.

Severity 2 Error

Response and Resolution:

For a Severity 2 Error, RedOwl shall provide:

- An initial response within eight (8) hours from the time RedOwl becomes aware of the Error during Support Hours.
- Periodic reports on the status of correcting such Error until a patch or workaround has been provided to Ordering Activity.
- A plan for resolution within three (3) business days of the time RedOwl becomes aware of the issue.

Severity 3 Error

Response and Resolution:

For a Severity 3 Error, RedOwl shall provide:

- An initial response within two (2) business days from the time RedOwl becomes aware of the issue during Support Hours.
- Resolution in a future release of the Software to the extent that this is commercially feasible.

Severity 4 Error

Response and Resolution:

For a Severity 4 Error, RedOwl shall provide:

- An initial response within three (3) business days from the time RedOwl becomes aware of the Error during Support Hours.
- Priority 4 requests will be addressed on a case by case basis and RedOwl will advise Ordering Activity if such request will be reflected in subsequent Software releases.

EXHIBIT B to the MASTER LICENSE AND SERVICES AGREEMENT PROFESSIONAL SERVICES TERMS

These Professional Services Terms set forth the terms and conditions under which RedOwl will provide Professional Services related to the Software during the term of the Agreement.

1. Services Provided

1.1 Statement of Work. Ordering Activity may from time to time purchase Professional Services from RedOwl by entering into a Statement of Work and issuing an Order Form for such Professional Services. A Statement of Work will specify: (i) the Professional Services, including any Deliverables that RedOwl will provide to Ordering Activity; (ii) specifications for the Deliverables; (iii) a schedule for completion of the Professional Services and delivery of the Deliverables; (iv) the fees and other specific terms under which RedOwl will provide the Professional Services and Deliverables; and (v) any other terms upon which the parties agree.

1.2 Additions and Changes. The parties may modify a Statement of Work by a written change order signed by both parties. RedOwl will have no obligation to perform any additional Professional Services or changes to the Professional Services until a change order has been agreed upon by the parties.

1.3 Time and Manner of Performance. Subject to the terms and conditions of these Professional Services Terms, RedOwl will use commercially reasonable efforts to provide Ordering Activity with the Professional Services and Deliverables specified in the Statement of Work.

2. Reserved.

3. Installation and Implementation Fee. As part of its Professional Services, RedOwl will perform set-up services to include installation and configuration of the Software and perform an initial data load. The initial data load will include up to six (6) months of Ordering Activity's historical communications data (email, Bloomberg messages) and up to six (6) months of securities transaction history including both professional and employees' personal account trading data at the beginning of the initial Subscription Term. RedOwl will deploy the Software in the Environment and will coordinate with Ordering Activity's technical counterparts on the deployment and implementation. The fee for this ingest will be as set forth in the Order Form and in accordance with the GSA Schedule price list. RedOwl will ingest Ordering Activity's historical data from six (6) months prior to initial Subscription Term or another date specified by Ordering Activity.

4. Analytic Support. As part of its Professional Services, RedOwl will provide analytic support for the initial Subscription Term as set forth in the Statement of Work. The fees for such will on a time and materials basis as set forth in the Statement of Work.

5. Training. RedOwl will provide Ordering Activity's staff with Training at Ordering Activity's facilities for the fees and hours specified in the Order Form in accordance with the GSA Schedule price list. Training materials will be provided in English, may not be modified or reproduced, and may only be used by those students attending the Training classes. Training purchased must be used by Ordering Activity within six (6) months of the date of the applicable Order Form and/or Statement of Work.

6. Reserved.

7. Ordering Activity Obligations

As a condition to RedOwl's obligations under these Professional Services Terms, Ordering Activity must provide the following:

7.1 Ordering Activity-provided Materials. Ordering Activity agrees to provide at its own expense, the software, hardware, computers, equipment and facilities required to operate the Deliverables, including those specified in the relevant RedOwl Systems Requirement document(s).

7.2 Access to Facilities. Subject to Government security requirements, Ordering Activity agrees to provide RedOwl access to the Ordering Activity facilities in order for RedOwl to perform the Professional Services.

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Riverbed Technology, Inc.
501 Second Street, Suite 410
San Francisco, CA 94107

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Riverbed Technology, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

RIVERBED TECHNOLOGY, INC.

RIVERBED TECHNOLOGY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. These terms and conditions ("Attachment A") shall apply to the sale or license of Products or Services from Contractor to the customer on the applicable Order ("Ordering Activity"). This Attachment A constitutes the agreement between Contractor and Ordering Activity with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. "Products" are Riverbed's currently generally available products, including hardware, software and documentation, listed on Contractor's GSA price list. "Services" means Riverbed's currently generally available maintenance and support services and any professional services listed on Contractor's GSA price list or that are otherwise sold to Ordering Activity hereunder. "Software" means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.
2. Ordering Activity will purchase from Contractor the Products and/or Services by submitting a written purchase order to Contractor (an "Order"). The terms and conditions of this Attachment A will apply to the Order and supersede any different or additional terms on Ordering Activity's purchase orders. The Products and Services are not for resale.
3. Contractor warrants to Ordering Activity that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Contractor warrants to Ordering Activity that the Products, upon original shipment by Contractor, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Contractor of the nonconforming Product (but not replacements). Products obtained from Contractor that do not comply with the warranty and are returned by Ordering Activity to Contractor during the warranty period (and for which a Contractor through Riverbed RMA has been issued) will be repaired or replaced at Contractor's option. Contractor will bear the cost of freight and insurance for return of goods to Ordering Activity. If Contractor cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Ordering Activity therefor will be credited to Ordering Activity. Contractor MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Ordering Activity's remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.
4. Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement, Exhibit A herein, that governs use of the Software solely for Ordering Activity's internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Ordering Activity will not) modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government ("U.S. Government"), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

Subject to Ordering Activity's compliance with all terms of this Attachment A and payment of Contractor's support and maintenance fees for the level of Riverbed support purchased (i.e., Silver Gold, or Platinum Level), Contractor through Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located under Exhibit C herein ("Support Services"). Contractor through Riverbed will not provide, and Ordering Activity will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Ordering Activity will not escalate calls to Contractor through Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Contractor obligations under any Support plan with respect to any Product is subject to payment of applicable Support fee's. The purchase or renewal of Support for any Product purchased by Ordering Activity requires the purchase or renewal of Support for all Products purchased by Ordering Activity. Riverbed retains ownership of any intellectual property resulting from Services. Ordering Activity may renew Support by submitting an Order for renewal of that Support. Ordering Activity may purchase annual Support for a Product that provides for one (1) to five (5) years of support subject to Riverbed's end of sale policy at www.riverbed.com/supportpolicy. If Ordering Activity purchases Support for a Product that provides for more than one year of support, the support period in excess of one year may be cancelled by Ordering Activity at any time without cause by providing written notice to Contractor, and any unused, prepaid amount (reduced by the amount of any additional discount provided because Ordering Activity purchased more than one (1) year of Support) will be refunded to Ordering Activity within 45 days of Contractor's receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Contractor will refund two years of prepaid, unearned support. All obligations of Contractor to provide support services will be terminated on receipt of the cancellation notice.

EXHIBIT A – LICENSE AND PRODUCT WARRANTY TERMS

1. **LICENSE GRANT.** Subject to the terms of this Attachment A and provided Ordering Activity has paid the applicable fees, Contractor hereby grants Ordering Activity a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use or access the Product solely for Ordering Activity's internal business use in accordance with the Riverbed documentation that accompanies it and any other use restrictions applicable for that Product, including without limitation any additional use restrictions set forth as Exhibit B herein. Except as expressly set forth in Exhibit B herein, Ordering Activity may use each licensed copy of the Software only as embedded in or for execution on a specific unit (or replacement thereof) of Riverbed hardware ("Hardware") owned or leased by Ordering Activity (including any units of replacement Hardware provided as part of warranty or support services). Ordering Activity may copy configurations of the Software solely for backup purposes. Without granting any additional licenses hereunder, Ordering Activity may authorize its contractors and outsourcers to use or operate the Products solely on Ordering Activity's behalf and provided Ordering Activity obtains such third parties' binding consent to abide by the terms of this Attachment A and provided Ordering Activity shall be responsible for such parties' use and compliance. Such parties are not, and shall not be deemed to be, third party beneficiaries under this Attachment A for any reason. See Exhibit B for any additional Product or service specific use rights or restrictions or limitations.
2. **LICENSE RESTRICTIONS.** Except as permitted by this Attachment A, Ordering Activity shall not, nor authorize anyone else to, directly or indirectly: (i) copy, modify, or distribute the Product; (ii) reverse engineer, disassemble, decompile or attempt to discover the source code or structure, sequence and organization of the Product (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited); (iii) rent, lease, or use the Product for timesharing or service bureau purposes for third parties, or otherwise use the Product on behalf of any third party; or (iv) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities. Notwithstanding anything to the contrary herein, Ordering Activity may utilize the Software pursuant to a leasing arrangement whereby the Ordering Activity leases the Product from a third party. Ordering Activity shall maintain and not remove or obscure any proprietary notices on the Product. As between the parties, title of and all ownership rights in the intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Riverbed and its suppliers or licensors. The Software is protected by the copyright laws of the United States and international copyright treaties. This Attachment A does not give Ordering Activity any rights not expressly granted herein.
3. **GOVERNMENT USE.** If Ordering Activity is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Attachment A. All other use is prohibited.
4. **SUPPORT AND UPGRADES.** This Attachment A does not entitle Ordering Activity to any support, upgrades, patches, enhancements or fixes for the Product (collectively, "Support"). Ordering Activity must make separate arrangements for Support and pay any fees associated with such Support. Any software upgrades, patches, enhancements or fixes provided as part of Support for the Software that may be made available by Contractor through Riverbed shall become part of the Software and subject to this Attachment A. The terms of Riverbed's standard support services are located under Exhibit C herein.

Product Warranty Statement

STANDARD WARRANTY; WARRANTY DISCLAIMER. Contractor warrants only to Ordering Activity that the Products, when shipped by Contractor, will conform in all material respects to the applicable published specifications for such Products. Such

warranty does not apply to units that have been damaged, mishandled, mistreated or used or maintained or stored other than in conformity with such specifications and Contractor's instructions. EXCEPT FOR BODILY INJURY, ORDERING ACTIVITY'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CONTRACTOR'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CONTRACTOR FOR RETURNED NON-CONFORMING UNITS OF PRODUCT FOR WHICH FULL DOCUMENTATION AND PROOF OF NON-CONFORMITY IS PROVIDED TO CONTRACTOR (AND FOR WHICH A SUPPLIER RMA HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF HARDWARE COMPONENT, OR NINETY DAYS IN THE CASE OF SOFTWARE (WHETHER OR NOT EMBEDDED), AFTER THE ORIGINAL NON-CONFORMING UNITS (BUT NOT REPLACEMENTS) ARE SHIPPED BY CONTRACTOR. SUCH REFUND SHALL BE PAID TO THE ORDERING ACTIVITY MAKING THE WARRANTY CLAIM. EXCEPT FOR THE FOREGOING, CONTRACTOR PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS ATTACHMENT A. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY. THE PRODUCT IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL.

EXHIBIT B – ADDITIONAL USE RIGHTS

1. The following additional terms apply to any Riverbed products designated as a "spare" or "cold spare":

If a Riverbed product is being provided as a "spare" or "cold spare" as identified at the time of sale or on Contractor's GSA price list ("Spare"), then such Spare is provided solely as a replacement unit and is not supplied for independent productive use. Ordering Activity agrees to use any Spare solely for replacement of a fully licensed product that is no longer operational and has been disconnected from Ordering Activity's network and power supply. Ordering Activity must contact Riverbed Support to transfer any applicable support service plans from the fully licensed product to the Spare. Upon replacement, the Spare shall become a fully licensed product subject to this Attachment A terms, whereupon the product removed from production shall become a Spare. Any use by Ordering Activity contrary to the foregoing is prohibited.

2. The following additional terms apply to any Riverbed products designated as a "lab unit" or "lab product" or "development license":

If a Riverbed product is being provided as a "lab unit", "lab product" or "development license" as identified at the time of sale or on Contractor's GSA price list ("Lab Unit"), then such Lab Unit is provided solely for Ordering Activity's internal lab testing and not in a production environment. Lab Units may not be resold or transferred or used for the benefit of any third party. Any use by Ordering Activity contrary to the foregoing is prohibited.

3. Steelhead Mobile client software:

Steelhead Mobile client software may be copied onto Ordering Activity's laptops or other personal computers, provided that the total number of concurrent users does not exceed the number of concurrent user licenses acquired by Ordering Activity.

4. CMC-VE software:

Each instance of CMC-VE software licensed by Ordering Activity may be (a) installed on a single server or cluster of servers operating as a single entity running a supported operating system or computing platform and used in production to manage Riverbed devices, and (b) installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary server or server cluster specified in (a) above fails. Only one copy of a single CMC-VE instance may be running or used at any time. Ordering Activity may use CMC-VE software instance(s) purchased by Ordering Activity to manage Riverbed devices only up to the total number of CMC-VE management licenses purchased by Ordering Activity, and CMC-VE management licenses can only be used with a single CMC-VE instance at a time. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes. For Ordering Activities who are using CMC-VE software to manage Riverbed devices used to deliver a managed or outsourced service to its end customers, such CMC-VE software may not be resold, transferred, sublicensed or distributed to the end customer, and each instance of such CMC-VE software may be used to manage Riverbed devices for only one end customer.

5. Virtual Steelhead software:

Each instance of Virtual Steelhead software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Virtual Steelhead instance may be running or used at any time. Provided that the Virtual Steelhead software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Steelhead software from the designated Licensed Server to another designated server, provided that the new designated server is identified to

Riverbed at the time of transfer and, upon transfer, the Virtual Steelhead software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Virtual Steelhead instance(s) purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

6. AirPcap, Pilot PE, Cascade Pilot, WiFi Pilot:

Each instance of Software may be installed on a single server or device and only one copy of a single software instance may be running or used at any time.

7. Whitewater:

Each instance of Virtual Whitewater software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Virtual Whitewater instance may be running or used at any time. Provided that the Virtual Whitewater software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Whitewater software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Whitewater software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use the Whitewater appliance and Virtual Whitewater instance(s) purchased by Ordering Activity to transmit data to and from designated service provider cloud environments up to the number of terabytes licensed by Ordering Activity from Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

8. Cloud Steelhead:

Each instance of Cloud Steelhead software licensed by Ordering Activity (a) may be installed in either a designated service provider cloud environment or at a Ordering Activity site, and may be used for the term of the license purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance, (b) includes access to Riverbed's Cloud Portal and use of Riverbed's Discovery Agent software, which may be used for the term of the license purchased by Ordering Activity, and (c) includes Riverbed's then standard software maintenance and support services, as described [in Exhibit C herein](#), for the term of the license purchased by Ordering Activity. With respect to any instances of Cloud Steelhead software installed at a Ordering Activity site, such Cloud Steelhead software may only be used to optimize traffic between such Ordering Activity and the Ordering Activity's designated service provider cloud environment and cannot be used solely to optimize traffic on such Ordering Activity's network.

9. Stingray Optimizer Software:

Each instance of the Stingray Optimizer software licensed by Ordering Activity may be installed on a single server that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Use of each instance(s) purchased by Ordering Activity is limited to the type and scope of use licensed by Ordering Activity as specified in the applicable Product description as follows: (a) SharePoint Optimizer software may be used to accelerate SharePoint, for the Ordering Activity's internal intranet on a per seat basis, or the Ordering Activity's external facing website up to a designed number of unique visitors per day, (b) Website Optimizer software may be used to accelerate designated Ordering Activity websites, up to a designed number of unique visitors per day or on a per server basis. Provided that the software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

10. Stingray Traffic Manager and Application Firewall Software:

Each instance of Stingray Traffic Manager or Application Firewall software (including software and virtual appliances) licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Stingray instance(s) purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

11. Stingray Traffic Manager Software, Term License:

Each instance of Stingray Traffic Manager software licensed by Ordering Activity on a term basis may be installed in either a designated service provider cloud environment or at a Ordering Activity site installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"), and may be used for the term of the license purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Each such instance includes Riverbed's then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed.

EXHIBIT C – MAINTENANCE AND SUPPORT SERVICES

1. Software Maintenance

- a. Software Updates. Ordering Activity shall be entitled to receive, and Contractor through Riverbed shall provide Ordering Activity e-mail notification of, all maintenance releases, updates and upgrades to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed's Support Services Ordering Activities. The contents of all maintenance releases and updates shall be decided upon by Riverbed in its sole discretion. Ordering Activity may obtain updates by downloading the updates from Riverbed's Support care website (support.riverbed.com). Product software maintenance releases and updates may only be installed on Products that are covered by then current support and maintenance services. Any such software provided by Riverbed shall be subject to this Attachment A.
- b. Supported Software. Contractor through Riverbed supports the current major release of Product software, plus certain prior versions of software in accordance Riverbed's support policy available at: www.riverbed.com/supportpolicy.
- c. Error Corrections. Contractor through Riverbed shall use its reasonable efforts to correct any reproducible programming error in the Product software attributable to Riverbed with a level of effort commensurate with the severity of the error, provided that Riverbed shall have no obligation to correct all errors in the Product software. Upon identification of any programming error, Ordering Activity shall notify Riverbed of such error and shall provide Riverbed with enough information to reproduce the error. Riverbed shall only be responsible for correcting errors that are (1) attributable to Riverbed and (2) reproducible by Riverbed on unmodified Product software as delivered to Ordering Activity.

2. Hardware Replacement

- a. Return Material Authorization. Before returning any Product, Ordering Activity must contact Riverbed Support and obtain a Return Material Authorization (RMA) number by calling the designated support telephone number or logging a request via the Support website. If Riverbed Support verifies that the Product is likely to be defective, Contractor through Riverbed will issue Ordering Activity an RMA number, which allows Ordering Activity to return the defective unit to Riverbed for repair or replacement.
- b. Shipping. Contractor through Riverbed cannot accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with the RMA number to Riverbed. If Ordering Activity ships the Product on their own account, Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent); Ordering Activity will be responsible for any damage in transit if Ordering Activity fails to use adequate packaging. Riverbed will provide Ordering Activity with the shipping address at the time of RMA issuance. Responsibility for shipping costs, both return shipping from the Customer to Riverbed and Riverbed's shipment of replacement Products to Ordering Activity, shall be as set forth in Table 1 below.

Table 1: Service Contract Shipping Cost Responsibilities

Region		Silver		Gold		Gold Plus		Platinum		Dead on Arrival	
		Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer
North America	To Customer	x		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Latin America	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
EU States	To Customer	X		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Non EU States, MEA	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
APJ	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	

- c. Repair or Replace: Contractor through Riverbed may replace or repair the Product with either a new or reconditioned Product.
- d. Dead on Arrival Products: For RMAs that are issued by Contractor through Riverbed within the first thirty (30) days after original Product shipment, Riverbed will ship a new (not refurbished) advance replacement unit via express delivery; such Product may be shipped from Riverbed's manufacturing facilities. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm PST USA by Riverbed will be shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.
- e. Silver-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed within the first ninety (90) days after original Product shipment, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations. For RMAs that are issued by Riverbed after the first ninety (90) days after original Product shipment, at Ordering Activity's request, Riverbed will ship a replacement unit within ten (10) business days via ground delivery once Riverbed confirms receipt of the defective unit at the shipping address designated by Riverbed at the time of RMA issuance.
- f. Gold-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.
- g. Gold-Plus-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will deliver replacement Product to the applicable installation location within 4 hours, 24 hours per day, 7days per week, provided that the delivery time may be greater than 4 hours based on the location, and 4 hour coverage may only be available during business hours in some locations. Please contact Riverbed to determine if Gold Plus support is available in your area, and if it is, the applicable Product delivery time. Riverbed will use reasonable endeavors to establish service spares close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Ordering Activity from Silver or Gold to Gold Plus support; Product delivery times may be impacted until such service spares are established. Gold Plus may not be available at the new location or the delivery time may be impacted.
- h. Platinum-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will either (a) ship an advance replacement unit via express delivery, or (b) provide on-site Product repair or replacement within 4 hours, provided that the on-site response time may be greater than 4 hours based on the location. Please contact Riverbed to determine if on-site support is available in your area, and if it is, the applicable on-site response time. Riverbed will use reasonable endeavors to establish

service spares and trained local field engineers close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Customer from Silver or Gold to Platinum support; on-site response times may be impacted until such service spares and local field engineers are established. If the Product is shipped to Ordering Activity for next business day delivery, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

3. Ordering Activity Support

- a. Support. Contractor through Riverbed will provide Ordering Activity with technical support by the following methods: World Wide Web, email and telephone. Such support will include:
 - i. Assistance related to questions on the installation and operational use of the Product;
 - ii. Assistance in identifying and verifying the causes of suspected errors in the Product; and
 - iii. Providing workarounds for identified Product errors or malfunctions, where reasonably available to Riverbed.
 - iv. Ordering Activity will designate the contact information of two named individuals to act as support liaisons to utilize the support and will ensure that such persons will be properly trained in the operation and usage of the Product; Riverbed will not be obligated to provide support or maintenance services to any other individuals. Ordering Activity agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Ordering Activity regarding the Product. Ordering Activity also agrees to promptly implement all updates and error corrections provided by Riverbed under this Attachment A. Upon request, Ordering Activity will provide access for on-line diagnostics of the Product during error diagnosis.
- b. Support Web Site. Contractor through Riverbed may provide Ordering Activity with an authorized account to access Riverbed's Support website. Riverbed may make available the following services through its Support web site:
 - i. Product software releases that can be downloaded by Ordering Activity;
 - ii. Documentation for Product;
 - iii. Issuing trouble reports identified by Ordering Activity through Riverbed's Support website;
 - iv. Issuing suggestions for enhancements through Riverbed's Support website.
- c. Telephone Support. Telephone support shall include Direct Hotline Support. Ordering Activity may contact Support directly 7x24 via telephone at 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381.
- d. Special Services. Ordering Activity may request maintenance and support services not specifically provided for in this Attachment A.

4. Product Obsolescence

Riverbed's End of Sale and End of Support policy is available at: www.riverbed.com/supportpolicy.

5. Support Service Levels

A problem is defined as a situation where the software does not function as intended. The detail below defines priority levels of each problem type. Contractor through Riverbed will use commercially reasonable efforts to provide the service level responses included below.

Priority 1

- Definition: A catastrophic problem that severely impacts the Ordering Activity's ability to conduct business. This may mean that the Ordering Activity's systems and/or Product are down or not functioning and no procedural workaround exists.
- Riverbed Response: Contractor through Riverbed to respond within one (1) hour. The objective is to get the Ordering Activity back on line within 24 hours and to downgrade the problem severity accordingly. Efforts to isolate, diagnose, and deliver a work-around or repair shall be continuous. When the severity level has been changed to "Priority 2" or "Priority 3," the appropriate guidelines should be followed.

Priority 2

- Definition: A high-impact problem in which the Ordering Activity's operation is disrupted but there is capacity to remain productive and maintain necessary business-level operations. The problem may require a fix be installed on the Ordering Activity's system prior to the next planned commercial release of the software.
- Riverbed Response: Contractor through Riverbed to respond within four (4) hours following receipt of a call. Efforts to isolate, diagnose, and deliver a work-around or repair problems shall be continuous during business hours.

Priority 3

- Definition: A medium-to-low impact problem that involves partial loss of non-critical functionality. The problem impairs some operations but allows the Ordering Activity to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Ordering Activity's operation.
- Riverbed Response: Contractor through Riverbed to respond within eight (8) hours following the receipt of a call. Action should be appropriate to the nature of the escalation.

Priority 4

- **Definition:** Minor problems: all other errors. This includes documentation errors. The inconvenience is slight and can be tolerated.
- **Riverbed Response:** Contractor through Riverbed to respond within the next business day following the receipt of a call during normal business hours. Riverbed's support organization will respond in a manner appropriate to the nature of the call.

6. Escalation Procedures

If problems are not responded to as targeted above, Ordering Activity may escalate the issue to appropriate Riverbed management personnel. Contractor through Riverbed provides systematic escalation management to Ordering Activity with current service plans. The Riverbed escalation process notifies levels of management throughout the life cycle of the technical issue. This ensures that the appropriate resources resolve outstanding technical problems as efficiently as possible.

SEVERITY	NOTIFICATIONS		
	Escalation Engineer	Manager	Executive Staff
1. Critical	Within 1 Hour	1 Hour	4 Hours
2. High	Within 4 Hours	8 Hours	24 Hours
3. Minor	Within 8 Hours	Weekly	N/A
4. Informational	Within 24 Hours	N/A	N/A

To escalate a case, email support@riverbed.com or call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381. A case follows this escalation path: Support Engineer to Local TAC Manager to Regional Support Director to Director of Support Operations to VP Support.

7. Continuous Support Coverage

Regardless of where the case originates, Riverbed Support endeavors to solve the case when it is opened. The Support team uses a "follow the sun" process to hand-off cases between different Support Centers.

For example, between Monday and Friday, 8 AM - 5 PM GMT, a case from Europe will be routed to the Amsterdam Support Center. After regular business hours in Europe, the case may be routed to the New York or San Francisco Support Center, when the Amsterdam office is closed. If the case remains open, it is passed back to the Amsterdam Support Center for the beginning of their next business day.

8. Case Handling

Contractor through Riverbed is committed to ensuring Ordering Activity success and satisfaction. All support services professionals are rigorously trained on Riverbed products, their underlying technologies, and industry leading technical problem-solving methodologies. Case handling follows these steps:

An Ordering Activity can open a case in one of the following ways:

- call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381
- send an email to support@riverbed.com
- generate a ticket directly from the Riverbed Support web site support.riverbed.com

When Ordering Activities open a case, they should be prepared to provide the following:

- Serial number of hardware component with issue
- Detailed description of the problem
- Priority level and impact of the problem
- Indication of the activity that was being performed when the problem occurred
- Software version
- Configuration data

Once a case is submitted, the issue is assigned to an escalation engineer ("EE"). Every EE is trained to perform extensive troubleshooting to quickly resolve the issue. All opened cases are tracked in Riverbed's online support tracking system. While working to resolve an issue, the EE may need to access information on the Ordering Activity system relative to the failure, or may need to recreate the failure to get additional information. If the problem is related to the system configuration, the Ordering Activity may be asked to provide a network diagram and configuration information. If the Ordering Activity and the EE agree, the Ordering Activity may send log files or trace files to Riverbed through email or upload them to the Riverbed Support FTP site for further review.

Note: Any information sent to Riverbed to help resolve Ordering Activity problems is treated as confidential.

A case is closed when all parties agree the reported issue has been resolved. If the Ordering Activity issue is determined to be an enhancement, a Feature Request is entered into the Riverbed defect tracking system. A Feature Request is handled and processed by Product Management and Engineering.

Consistently improving quality of service is a very high priority within Riverbed. After closing a case, a survey is sent to the Ordering Activity asking for feedback as to how the case was handled and where Riverbed can improve. Ordering Activity Support managers and executives review the survey responses, and take action where appropriate. Individual entries in this survey may be shared on the Support website anonymously, but identifiable submitter details are not shared. Individual entries will not be used for marketing purposes. The sole purpose of these survey results is to evaluate and improve Riverbed services.

9. Restrictions

Ordering Activity is entitled to receive Support Services only on Products for which Ordering Activity has purchased Support Services; Support Services commence upon sale of the applicable Product by Riverbed. Contractor through Riverbed will not be obligated to provide any Support Services: (1) on Products that: (a) have been altered, modified, mishandled, or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with Riverbed's specifications, documentation and instructions, or (c) have been misused or operated outside of the environmental specifications for that Product; (2) where the problem relates to Ordering Activity's or a third party's network, systems, hardware, software, or other problem beyond the reasonable control of Riverbed; or (3) to any geographic location or to any customers in violation of applicable laws or regulations. Ordering Activity acknowledges and agrees that Riverbed's ability to provide Support Services is dependent on Ordering Activity providing accurate Product installation location information, and any failure to do so may impact Riverbed's ability to provide the Support Services. Remote access to the Products on Ordering Activity's network may be required to diagnose or resolve a support problem, and Ordering Activity's failure to provide such access may impact Riverbed's ability to resolve the support problem. Riverbed will not be responsible for any Product replacement or repair delays caused by Riverbed's compliance with export/import laws and regulations. Riverbed's obligations under any Support Service plan with respect to any Product is subject to Riverbed's receipt of the applicable annual Support Services fee. Riverbed retains ownership of any intellectual property resulting from Support Services.

RSA Security
174 Middlesex Turnpike
Bedford, MA 01730

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **RSA Security** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
 - l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
 - m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
 - n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
 - o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
 - p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
 - q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
 - r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
 - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

RSA SECURITY

RSA SECURITY LICENSE, WARRANTY AND SUPPORT TERMS

End User Software License Agreement For Use with GSA Schedule 70

RSA Security LLC, located at 174 Middlesex Turnpike, Bedford, MA 01730 ("Licensor"), and _____, with a principal place of business at _____ ("Customer"), agree that this End User Software License Agreement ("EULA") shall govern any Software listed on an Order accepted by Licensor after the date of last signature below (the "Effective Date").

1. DEFINITIONS.

- A. **"Documentation"** means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.
- B. **"Products"** mean **"Equipment"** (which is the hardware delivered by LICENSOR to Customer) and/or **"Software"** (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).
- C. **"Product Notice"** means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp
- D. **"Software Release"** means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.
- E. **"Eligible Ordering Activities"** are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a "Customer". Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as "Executive Customers". All other Eligible Ordering Activities are referred to as "Other Customers".

2. LICENSE TERMS.

- A. **General License Grant.** LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.
- B. **Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
- C. **License Restrictions.** All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer's authorized internal use of the Software. Customer shall not, without LICENSOR's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark

testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

E. Audit Rights. LICENSOR shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer's business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

F. Disputes. For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA's with Other Customers are not subject FAR 52.212-4 (d) Disputes. .

G. Reserved Rights. All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer's prior written consent, nor shall Customer permit any third party to do the same.

H. Other License Terms. If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

3. PRODUCT WARRANTY.

A. Software Warranty. LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

C. Customer Remedies. LICENSOR's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR's then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes.

LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. INDEMNITY. LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or RSA Security LLC, and LICENSOR and/or RSA Security LLC shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its

option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

5. LIMITATION OF LIABILITY.

- A. Limitation on Direct Damages.** EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.
- B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.
- C. Regular Back-ups.** As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer's production systems. To the extent LICENSOR's liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.
- D. Limitation Period.** Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.]
- E. Suppliers.** The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

6. EXPORT CONTROL. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, "**Export Laws**"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. TERM AND TERMINATION. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

- A.** EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).
- B.** For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

8. MISCELLANEOUS.

- A. References.** LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.
- B. Notices.** Any notices hereunder shall be in writing.
- C. Entire Agreement.** This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.
- D. Force Majeure.** Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

- E. Assignment.** Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR's prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.
- F. Governing Law.** To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- G. Waiver.** No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

Licensor: Licensee:

By: By:

Name (Print): Name (Print):

Title: Title:

Date: Date:

RSA SOFTWARE USE RIGHTS

RSA software products (“Software”) are licensed by RSA to customers who order 1) directly from RSA (“Direct End-Users”) under a signature-bearing agreement between RSA or the applicable EMC affiliate and the Direct End-User, 2) under the terms of an End-User License Agreement (“EULA”) that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software, or 3) through channel partners under the terms of a EULA that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software. The information in this Software Use Rights (“SUR”) document is provided to further define the license rights and limitations for Software products.

RSA Software is licensed via a Unit of Measure used to quantify the scope of license rights based on a particular licensing model for such RSA Software. Some Agreements, schedules, or quotes refer to the UOM as a “license unit” or such other similar term. Use of the RSA Software beyond the scope of the rights granted requires additional or modified license grants, and additional payment of applicable license and maintenance fees.

- **Appliance (APP).** An appliance is the Hardware provided to Customer which has been loaded with the RSA Software.
- **Central Processing Unit (CPU).** RSA Software licensed on a “per CPU” basis means the maximum number of CPUs upon which you may install and use this RSA Software. A CPU is a single central processing unit within a computer system.
- **Collector Device (CD).** RSA Software licensed on a “collector device” basis means the number of source devices and applications from which events are collected within the Customer environment. The Server is licensed to run a single instance on the RSA® enVision® Appliance.
- **Concurrent (CNC).** RSA Software licensed on a “per concurrent User” or “per concurrent client connection” basis means the maximum number of Users or client connections that may concurrently use or access the RSA Software.
- **Database (DB).** RSA Software licensed on a “per Database” basis means the maximum number of Databases with which you may use the RSA Software. A “Database” is a data repository managed by a Server.
- **Events per Second (EPS).** RSA Software licensed on an “Events per Second” basis is defined as the number of events collected per second within the customer environment.
- **Field of Use (FOU).** RSA Software licensed on a “Field of Use” basis is licensed with a license restriction on a field of use, number of users, servers, platforms, or other restrictions. A “Field of Use” is defined as a license restriction as outlined in a Schedule, Quote, or Purchase Order subject to the terms and conditions of the Agreement.
- **File System (FS).** RSA Software licensed on a “per file system” basis means each file server to be encrypted. Separate licenses for production and development systems are required.
- **Instance (INST).** RSA Software licensed on a “per Instance” basis means the maximum number of individual installations of an RSA Software application, or “Instances,” you may use at the same time in a production environment. For each Instance of the RSA Software license hereunder for production use, the Customer will receive the right to use two (2) additional Instances in non-production use (including standby/development/disaster recovery). License fees for additional Instances (both production and non-production) will be quoted on request.
- **Number of Connections.** RSA Software licensed on a “Number of Connections” basis means the RSA Software is licensed per connection between each computer FIM connects to.

- **Server (SVR/SRVR).** RSA Software licensed on a “per server” basis means the maximum number of physical servers on which you may install and use the RSA Software.
- **User (USR).** RSA Software licensed on a “per User” basis (sometimes referred to as a per “seat”) basis means the maximum number of Users that may be authorized to use or access the RSA Software, regardless of whether such Users are actively using or accessing the RSA Software at any given time. Except as otherwise agreed in an applicable Agreement, Schedule, or Quote, “User” means your agents, employees, consultants, or independent contractors authorized by you to use the RSA Software on your behalf. RSA Archer® Software Specific USR qualifiers: Different categories of Users (USR) will apply for RSA Archer Software licensed on a per User basis (these do not apply where the RSA Archer Software is licensed on a per Instance (INST) basis).
- **Full Access User (USR-FAU).** Means a User with unrestricted access, with authority to create, update, and/or delete system entries, to all nine (9) core solutions of the RSA Archer Software including: Policy Management, Risk Management, Compliance Management, Incident Management, Vendor Management, Threat Management, Enterprise Management, Business Continuity, and Audit Management. This further includes unlimited User access to On-Demand applications, the Training and Awareness solution, Questionnaires, and Exchange Applications.*
- **Assessment User (USR-AU).** Assessment Users are authorized to use the RSA Archer Software for the purpose of conducting up to four (4) assessments each year using the following core solutions of the RSA Archer Software only: (i) Risk Management, (ii) Vendor Management, and/or (iii) Compliance Management Solutions. Assessment Users have authority to create, update, and delete system entries (subject to the foregoing limitations on accessible core solutions of the RSA Archer Software and frequency).*
- **Read-Only User (USR-ROU).** Read-Only Users may only access the following core solutions of the RSA Archer Software: (i) Policy Management, (ii) Training & Awareness, and/or (iii) Business Continuity Management Solutions. Read-Only Users are not permitted to create, update, and/or delete any system entries.*

** Please refer to the generally available product documentation for descriptions of the foregoing core solution components.*

ADDITIONAL INFORMATION

Additional disclaimer applicable to RSA Archer Software: “RSA Security LLC and its affiliates explicitly disclaim any warranty or guarantee of the accuracy, currency, completeness, or adequacy, of the content provided herein, and shall in no event be liable for any loss, damage, liability, or expense suffered by any person in connection with reliance by that person on any such material or otherwise. In no event shall the inclusion of any of the content provided herein be construed as legal advice. **INFORMATION PROVIDED AT THIS SITE IS PROVIDED 'AS IS' WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.”**

Additional copyright information applicable to RSA Archer Software: “Portions Copyright © 2002 to 2010 Corporate Web Solutions Ltd./WebAvail Productions Inc.”

Additional terms applicable to RSA Archer Software: RSA may identify Customer for reference purposes and use Customer’s logo in its marketing material unless and until Customer expressly objects in writing.

Restrictions on use of RSA SecurID solution: For all purposes under the Agreement, token records to RSA SecurID authenticators shall be deemed RSA Software and be subject to the restrictions on transferability set forth in Section 4(c) of the Agreement.

Restrictions on use of RSA enVision Software:

- (1) RSA enVision Software identified in an order as a test system may be used in non-production environments only;
- (2) enVision Software identified in an order as a standby system may be used with cold-standby deployments only. The foregoing is subject to the following exception: In the event the production system that the standby system has been purchased with is unavailable due to failure or maintenance, the standby system may be used in a production environment. In no event may redundant system pairs operate concurrently beyond the use required due to failure or maintenance. Use of the standby system in a production environment shall be subject to the license restrictions of the production environment it is replacing;
- (3) Customer may receive the enVision Software in more than one medium. Customer may not use or install the other medium on another computer and may not loan, rent, lease, or otherwise transfer the other medium to another user; and
- (4) Customer understands that enVision Software is bundled with products which are subject to the Microsoft Software License Terms, currently located at <http://www.rsa.com/node.aspx?id=2469> and <http://msdn.microsoft.com/en-us/sqlserver/aa937726>, which Customer agrees to accept.

Restriction on Use of RSA Authenticators: Customer shall use the RSA authenticators only to authenticate to RSA Software. Customer shall not use any hardware cards, tokens, or other devices not provided by RSA to authenticate to the RSA Software, unless otherwise authorized by RSA in writing.

Restriction on Use of RSA Archer Software:

If Customer is licensing RSA Archer software on a term basis, the following provisions shall apply:

Software License Term: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, no perpetual licenses are granted to Customer for the use of the RSA Archer Software and the following provisions shall apply:

The initial term of the license granted by RSA to Customer to use the such RSA Archer Software (the "Initial Term") shall commence on the effective date of this Quotation and remain in effect for (i) the period stated on the first page of this Quotation; or (ii) where no such period is so stated for three (3) years, unless sooner terminated in accordance with the Governing Agreement(s). The Initial Term shall automatically renew for consecutive additional one (1) year periods (each a "Renewal Term") provided that (1) Customer pays the applicable license fee (as specified in this Quotation or as otherwise quoted by an RSA representative or channel partner) prior to expiration of the then current term, and (2) neither party has sent the other party written notice of termination at least sixty (60) days prior to the end of the then current term.

No rights of termination for convenience will apply during the Initial Term or any Renewal Term and any provisions to the contrary in the applicable Governing Agreement(s) will be deemed amended to give effect to this provision. The license rights granted hereunder shall not survive termination of the Governing Agreement(s) and such Agreement(s) are deemed amended to give effect to this provision.

Pricing and Payment: The "Net Price" listed on the first page of this Quotation in the applicable row of the "Products" table shows the total amount that Customer shall pay for the license of RSA Archer Software for the Initial Term. RSA shall invoice Customer annually in advance for one (1) year's worth of license and maintenance fees for each year of the Initial Term and any Renewal Term. For example: if the Initial Term is three (3) years RSA will send Customer an invoice for 1/3 of the "Net Price" after the RSA Archer Software is made available to Customer through electronic file transfer or shipment of media containing such Software. In certain instances, RSA may invoice term licenses for RSA Archer software in a different manner. In such a case, the amount due for each year of the term license shall be set forth in the row entitled "Miscellaneous" on the first page of this Quotation.

If Customer is licensing RSA Archer Software bundled with other RSA software (SKU: BLP-P Solution Platform-perpetual license), the following provision shall apply:

Software License: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, Customer shall only be able to utilize the RSA Archer Software for internal purposes with other RSA software which Customer has licensed.

Restriction on Use of RSA NetWitness Products:

If Customer is purchasing RSA NetWitness Products, the following provisions shall apply:

RSA may use all or any portion of information and knowledge gained by RSA in connection with such products, including, without limitation, such information and knowledge regarding attacker and beacon activity, to improve hardware, software, and/or services. RSA may also share it with others, such as hardware and software vendors who may use it to improve how their products interoperate with or support RSA products or services. To the extent that any services specified in any contract resulting from this Quotation, including without limitation installation, configuration, and/or maintenance services, constitute "defense services" as defined under the U.S. International Traffic in Arms Regulations ("ITAR"), 22 CFR 120.9, then RSA's commitment to provide such services shall be subject to the receipt of any required authorization from the U.S. Department of State, and the delivery schedule and pricing for such services shall be reasonably adjusted as appropriate to reflect such requirements. RSA shall not be liable for any delay in performing or failure to perform defense services due to delays or refusal by the U.S. Department of State to grant any such required authorization.

If Customer is licensing RSA NetWitness products or services on a term basis, the following provisions shall apply:

To the extent the first page of a Quotation offers a NetWitness product or service on a term or subscription basis, notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), no perpetual licenses are granted to Customer for the use of such product or service. The term license to such product or service shall commence on the effective date of this Quotation and remain in effect for the period stated on the first page of this Quotation.

Restriction on Use of RSA Adaptive Authentication On-Premise Product:

If Customer licenses the RSA Adaptive Authentication On-Premise Product, the provisions set forth on Schedule 1 hereto shall apply.

SCHEDULE 1

ADAPTIVE AUTHENTICATION PRODUCT SPECIFIC TERMS & CONDITIONS

1. Definitions.

The following terms shall have the definitions below or set forth elsewhere herein. All references to “Section” shall refer to sections of this Schedule, unless otherwise specified herein.

“Active End User” means an account holder or other client of the Customer (an “End User”) whose identity has been processed or profiled or scored or authenticated or otherwise verified by the Product at least once in the course of the six (6) months immediately preceding the then current date.

“Active End User Ceiling” means the maximum number of Active End Users which Customer is licensed to store at any given time using the Product and as set out in applicable Quote.

RSA “eFraud Network™” database means a database owned and operated by RSA which contains information aggregated by RSA, discovered by the parties as part of the performance of their obligations under this Schedule, obtained, and/or procured from third parties and/or resulting from risk and fraud assessments carried out by RSA and includes without limitation IP addresses, Phishing website URLs, and any other related data.

“Exhibit” means Exhibits A, B, and/or C attached hereto, the terms of which are incorporated herein by reference;

“Product” means (a) the RSA consumer software suite described in Exhibit A and developed by RSA together with any Software releases, fixes, or patches delivered pursuant to the Maintenance Services, known as the RSA Adaptive Authentication Web Protection System.

2. License, Ownership.

A. RSA hereby grants Customer a perpetual, non-exclusive, nontransferable license to run and use those components of the Product as selected in an RSA issued Quote, for Customer's own use for the purpose of processing Active End User authentication information on its web portals, online services, and/or its electronic transaction clearing systems. Such license shall be subject always to the Active End User Ceiling as further detailed in this Schedule.

B. Additional Software License Restrictions. Customer will not directly or indirectly use the Product for its internal enterprise authentication purposes. For the purpose of the Schedule, “internal enterprise authentication” means authenticating a login request (which request may originate either remotely or from Customer or an Affiliate's premises) of an employee, consultant, or an agent of Customer (or an Affiliate) for the purpose of granting the requestor access to Customer (or an Affiliate's) computer networks for the purpose of performing their assigned work.

C. Ownership and/or License of the eFraud Network database information. RSA shall retain and own all right, title, and interest and all intellectual property rights (including but not limited to copyrights, trade secrets, trademarks, and patent rights) to all information which is collected, submitted to, and made available on the eFraud Network in the course of the performance by either party of their obligations under this Schedule (or where such title cannot be granted or otherwise transferred to RSA, then Customer agrees to grant RSA an unconditional, unlimited, unrestricted, royalty free license to use, distribute, and/or otherwise make available such information).

D. RSA Trademark License. For so long as this Schedule remains in force, RSA grants Customer the right to use the “Secured by RSA” trademarks described in Exhibit C (the “RSA Mark”) solely for the purpose of displaying the RSA Mark on the End User facing web-based log in pages of its online services in compliance with Section 3 (on next page). Customer's use of the RSA Mark will conform at all times with RSA's quality and usage requirements and will be subject to prior review and approval by RSA. Customer will not seek to register any trademarks of RSA in any country in the world. Any use of the RSA Mark shall be in accordance with RSA's reasonable policies regarding advertising and

trademark usage as established from time to time.

3. RSA Branding of the Active End User interface to the Licensed Software.

For so long as Customer is subscribing for the Maintenance Services, Customer will (unless it is a U.S. governmental entity) place the following words: “Secured by RSA”, in the form of the trademark logo attached hereto under Exhibit C, on (i) the client facing web-based user interface which is deployed by Customer for the purpose of allowing Active End Users access to the Product; and (ii) whenever the personal security image of the site-to-user authentication module (as described in Exhibit A) is shown. Nothing else herein shall prevent Licensee from separately branding its security processes which may use the Licensed Software and other security processes.

4. Billing Files.

Customer will provide RSA with the billing files as generated by the billing utility component of the Product (as further detailed in the Documentation) at the end of each calendar month for the purpose of evidencing its ongoing compliance with the Active User Ceiling from time to time and subject to RSA’s audit rights under the Agreement.

5. Product Delivery.

RSA Software shall be delivered to the Customer at the email address specified in Exhibit A.

6. Authorized Active End Users; Active End User Ceiling Increases.

Customer may increase the authorized Active End User Ceiling from time to time by way of a purchase order referencing this Schedule. Where Customer has exceeded its then authorized Active End User Ceiling, Customer will promptly (and in any event in not less than thirty (30) days from the date the Active End User Ceiling is first exceeded) procure an increase to its then licensed authorized Active End User Ceiling, for the fees and in the minimum increments set out in a Quote so as to meet or exceed its actual use of the Product. Such increases will be procured by way of a purchase order referencing the Quote. Where Customer has upgraded the authorized Active End User Ceiling, RSA will invoice Customer the adjusted Maintenance Services fees on a pro-rata basis for the Maintenance Services year then in progress on the date of such upgrade in a Quote.

7. Maintenance Services.

Customer hereby purchases the Enhanced Support and Data Services as further described in Exhibit B for the Products ordered under this Schedule for a term of one (1) year (the “Initial Maintenance Term”) commencing on the date the Product is first made electronically available for download. Thereafter, Maintenance Services shall renew on an annual basis, subject to Customer’s payment of RSA’s invoice for the applicable Maintenance Services fees. RSA may increase the Maintenance Services fee, to be effective at the commencement of any future annual period, provided that RSA notifies Customer, in writing, of such fee increase at least thirty (30) days prior to the end of the previous annual period.

A

Base Product Description:

The Product without Additional Features is available for the license fees detailed in a signed Quote.

Product—RSA Adaptive Authentication Components—Login
Risk Based Authentication at Login (web-channel device identification using secure cookies, Flash Shared Objects, device forensics and network forensics including IP geolocation. This can be applied only during account login).
Baseline Policy Manager and Risk Models. (One set of policies per institution and generic risk models.)
Secondary Authentication: Challenge Questions. (Challenge Questions, including enrollment to collect challenge questions and answers.)
RSA eFraud Network Access. (Shared fraud data.) It is understood by the parties that Customer's access to the eFraud Network shall be contingent on Customer's agreement to submit non-identifiable fraud data via log files for inclusion in RSA eFraud Network's aggregated database and subject to Customer's ongoing subscription to the Enhanced Support and Data Services.
Case Management Module. Provides the Client functionality to track and update Active End User activities that were flagged for follow-up or authentication.
Site to User Authentication Module. (Enrollment and maintenance of image assignments, and image pool of 38,000 images.)

Description of Additional Features:

These components of the Product are available for extra license fees as detailed in a signed Quote.

Product—Transaction Monitoring
Assessment, analysis, and scoring of post-login transactions activities by a Bayesian, self-learning risk engine that leverages both device and behavioral profiling. A case management application allows investigating high risk transactions, marking the fraudulent ones, and feeding feedback into the risk engine. A partial list of such post-login transaction activities includes but is not limited to: transferring funds, making online payments, establishing payees, viewing check images, changing personal information, etc.
Product—Mobile Protection
The RSA Adaptive Authentication Mobile Protection Module provides strong authentication to End Users who access online banking applications via a mobile device (i.e., mobile phone, smart phone, iPhone, PDA, Blackberry, etc.). This module complements RSA Adaptive Authentication's web channel protection module. It is powered by the same risk-based authentication technology and provides the Customer with a unique risk model designed to address specific mobile transaction characteristics. By using the Mobile Protection Module, the Customer benefits from multi-channel fraud protection.

Service—Authentication Methods

OneTime Password (“OTP”). OTP generated by Adaptive Authentication and sent by Customer to the End User.

Out of band (“OOB”) Phone Call. OOB phone call (telephone confirmation, using RSA’s service and infrastructure and telephone numbers stored in Customer’s systems. Depending on the selected integration method, the OOB phone feature requires additional telephony infrastructure and involves set up costs and fees to make the phone calls.

OOB SMS. One Time Password generated by Adaptive Authentication and sent by RSA to End User via OOB SMS using phone numbers stored in Customer’s system (only for phones that support SMS). The OOB SMS feature involves set up costs and fees to send the SMS. Delivery of SMS messages (or timing of delivery) is not guaranteed.

B

Enhanced Support and Data Services

Customer acknowledges that the Basic Support Services (as described on the Support Website) are not available for the Product licensed under this Schedule.

In addition to then current Enhanced Support Services which will be provided as detailed on the Support Website, the Customer will also receive the Data Services described hereunder.

1. Definitions.

In addition to those defined terms of the Agreement and the Schedule, the following definitions shall be used for purposes of this Exhibit B.

- A. **“Data Services”** means, the delivery by RSA on an ongoing basis of (i) the Information; and (ii) updates to the eFraud Network; and RSA making available the online statistical analysis tools for the use of the Customer. The Information and any other data delivered pursuant to the Data Services will be deemed to form part of the Product under the Schedule.
- B. **“Geo-Location Service”** means the geo-location component made available with the Product.
- C. **“Information”** means the data and information derived from the Geo-Location Service.
- D. **“Support Website”** means RSA’s online support resource currently located at <http://www.rsa.com/node.aspx?id=1067>.

2. RSA Data Feeds for Adaptive Authentication.

Customer will receive the following Data Services:

- A. Delivery of eFraud Network database updates. Updates to the eFraud Network database will be made available to Customer by RSA via Internet protocol from RSA hosted servers. Where configured in accordance with the Documentation, the Product will automatically download the updates on a periodic basis and load them into a local data store, which is used for run-time analysis of inbound transactions.
- B. Delivery of Information. Information updates will be made available by RSA to Customer via Internet protocol from RSA hosted servers. Customer will download the updates on a periodic basis and load the Information into the Product for run-time analysis of inbound transactions.
- C. Online Statistical Analysis Tools. RSA will make available to Customer a set of reports or tools for generating reports, which will be hosted on RSA web servers, to allow Customer to understand Product system usage levels and patterns.

3. Enhancements to Maintenance Services.

Customer may purchase enhancements to the Maintenance Services, including the Personalized Support options Services, as described on the Support Website.

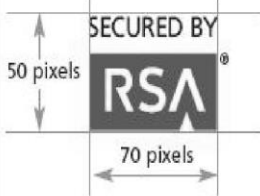
4. Additional Customer Obligations.

- A. Network and Device Forensics. In addition to those obligations set out on the Support Website, Customer shall provide to RSA daily scrubbed data activity logs, the case log file and the forensic data logs as further described in the Documentation. RSA will review these logs in order to provide the Maintenance Services hereunder and to improve forensic analysis of future Software Releases of the Product. Customer shall not transmit, send, or otherwise provide, directly or indirectly, to EMC any data that is considered personally identifiable under the laws of the jurisdictions applicable to Customer’s installation and use of the Product and Customer’s operations, and shall indemnify EMC for all third-party claims arising as a result of Customer’s breach of this obligation.

Trademark and Usage Guide

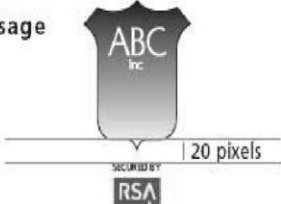
SECURED BY RSA—Logo Designator for RSA Adaptive Authentication Customers

The SECURED BY RSA logo has been designed as an indicator that the customer is using the RSA Adaptive Authentication solution. It is designed for web and print use and is not intended to be a substitute for the corporate logo or for use in locations other than the web pages or promotional material of companies that have purchased Adaptive Authentication. Nor is the SECURED BY RSA mark to be used as a substitute for the corporate logo in places where the Customer corporate logo is appropriate. This logo is not posted. Logo files may be obtained by contacting the Identity Protection and Verification solutions group at RSA corporate headquarters. It is to be used at the size indicated below. The logo consists of the RSA brick and the words SECURED BY. These two components should not be separated or changed; SECURED BY should always appear in the same proportions and relationship to the RSA notched rectangle.

Correct size and layout 	Incorrect: altered layout 	Incorrect: altered proportions 
Incorrect: combination with corporate logo The words "The Security Division of EMC" are not part of the SECURED BY RSA logo. The corporate logo, which includes the word "The Security Division of EMC", is a separate mark; the two logos may not be combined.		
		

In customer applications, the logo is to be seen only as a third-party mark that indicates the security features of the customer's website. Therefore the following restrictions apply to use:

(i) The logo may not be enclosed by the Customer's logo or other artwork so as to appear to be part of the Customer's logo.

Correct Usage 	Incorrect Usage 

(ii) The logo may be placed adjacent to the customer's logo or other artwork as long as there is sufficient empty (white) space between the two logos. Sufficient space online is defined as 20 pixels in any direction from the outer edges of the SECURED BY RSA logo. Sufficient space in print is defined as .5 inches in any direction from the outer edges of the logo.

EMC², EMC, the EMC logo, the RSA logo, RSA, RSA Archer, eFraud Network, enVision, and NetWitness, are registered trademarks or

RSA Warranty and Replacement Parts Maintenance Table

- B. Restrictions on use of the Geolocation Service and Information. Customer will not (a) reproduce or distribute the Geo-Location Service in a manner that allows its users to access the Geo-Location Service in any way other than through aggregate reports generated by the Product (as described in the Documentation); or (b) use the Information to create or otherwise support the transmission of unsolicited commercial email.

trademarks of EMC Corporation in the United States and other countries. All other trademarks used herein are the property of their respective owners. © Copyright 2011, 2012 EMC Corporation. All rights reserved. Published in the USA. H8761.4 Handout
Rev. June 6, 2012

RSA Warranty and Replacement Parts Maintenance Table

Product	Standard Warranty Period and Support Option	Support Option Upgrade during Warranty Period	Initial Product Installation	Support Options during Maintenance Period	RMA-Parts Replacement	Customer Performed Tasks (*1)	Designated Customer Replaceable Units (CRU's) (*2)
RSA Software	90 days: defective media replacement Support during warranty available with purchase or a maintenance support option	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Basic, (*6) Enhanced	N/A	Customer Installation of subsequent Software Releases	N/A
RSA Tokens	Full Lifecycle of Token up to 6 months from expiration	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Basic, Enhanced	Standard Token Replacement (*3) Advanced Token Replacement (*4)	N/A	N/A
RSA Appliance	90 Days	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Enhanced	Advanced Replacement (*5) - Next Business Day (Requests must be in by 2pm EST or 4pm Western Europe Time). 1st Year Advanced Replacement Maintenance for years 2 through 5	Customer(*7) Installation of subsequent Software Releases	Appliance
SaaS	N/A Hosted Solution(*8)	N/A	Performed by RSA	Basic, Enhanced	N/A	RSA Operation responsible for installation and maintenance of Hosted environment	N/A

1. Customer-Performed Tasks:

Customer-performed tasks are product support tasks that Customer is authorized by RSA to perform. RSA will provide diagnostic tools and documentation to enable customers to perform replacement of designated Equipment and other service tasks.

2. Customer Replaceable Units (CRUs):

CRUs are specific assemblies, components or individual parts of designated RSA Equipment that Customer is authorized by RSA to self replace. In the event of a Failure or technical issue, a customer may remove and replace a CRU by using RSA provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs, must be serviced and/or replaced by RSA or an RSA authorized service partner.

**** Authentication Manager and Authentication Manager Express CRU parts limited to complete Appliance****

3. Standard Token Replacement:

The System/Security Administrator at your company will return any non-expired tokens that no longer function properly to RSA. Replacements will be shipped within 5 days after the defective token is received. A printable form will be e-mailed back to the customer containing a pre-filled return form with RMA numbers and ship-to information. More details can be found here: <https://selfservice.rsasecurity.com/TWR/>

4. Advanced Token Replacement:

After filling out the appropriate information, RSA will ship out replacements for each valid token within 2 or 3 days. It is the customer's responsibility to ship the defective tokens back within 60 days of the receipt of the replacement tokens. If not, RSA will invoice for the amount of the replacement tokens shipped. More details can be found here: <https://selfservice.rsasecurity.com/TWR/>

5. Advanced Replacement:

Appliances are shipped out same day or next business day. Secure ID Appliances must be returned within 15 days of Receiving replacement or full value of Replacement Appliance will be incurred by Customer. For all other Appliances, Customer has 10 days to return faulty appliances.

6. Basic support not available for AA on Prem, Access Manager, DPM, or Authentication Manager

7. DPM Appliance installation performed by RSA/EMC Professional Services

8. SaaS

90 day defective media replacement. For both Archer and Adaptive Authentication for the Web on Premise

Archer On Premise: Installation not included. Performed by Customer or may be available for separate purchase

SAP NS2
6903 Rockledge Drive, 10th Floor
Bethesda, MD 20817

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **SAP NS2** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SAP NS2

SAP NS2 LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

"Chip" Electronic circuitry containing one or more Cores, usually on a silicon wafer.

"Chip License", or "CH" The limited right to install the Program on a Chip and to Use such Program in a production environment.

"Chip Development and Testing License" or "DH" The limited right to install the Program on a Chip and to Use such Program for development and testing purposes only and not in a parallel production environment. See "Chip" and "Chip License".

"Chip Standby License" or "SH" The limited right to access and Use a Standby Copy of a Program licensed under a Chip License in the event of an interruption of a production copy of the same Program. See "Chip", "Chip License".

"Cluster License", or "CL" The limited right to Use the Program on any number of Servers at the single physical location specified for such license in the applicable Purchase Order, but only if each such Server is part of a load-balanced or failover configuration and in the aggregate provides no greater access to the Program or any associated data than would be provided by a single Server operating alone.

"Concurrent User" or "CU" A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant ("PDA"), wireless device or real time device. See "Concurrent User License".

"Concurrent User License" The limited right for a maximum number of Concurrent Users equal to the quantity of such licenses purchased, as indicated in the applicable Purchase Order, to directly or indirectly access the Program on a single specified licensed Server at any given instant in time.

"Core" A functional unit within a computing device that interprets and executes software instructions.

"CPU" The unit of measurement used in the CPU License type (see "CPU License") and the Internet Access License type (see "Internet Access License"). Unless otherwise specified on the Purchase Order, for Sybase Programs, the number of CPUs is equal to the number of Processors or Cores on a Machine, and for iAnywhere Solutions Programs, the number of CPUs is equal to the number of Chips on a Machine irrespective of the number of Processors or Cores.

"CPU Development and Testing License" or "DT" The limited right to install the Program on a Machine on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Purchase Order, and to Use such Program for development and testing purposes only and not in a parallel production environment. See "CPU" and "CPU License".

"CPU License" or "CP" The limited right to install the Program on a Machine on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Purchase Order. The number of Seats that may access the Program shall be limited only by the capacity of the licensed CPUs, and may include internal usage by Seats within the Ordering Activity's organization, and external usage by Seats outside of the Ordering Activity's organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Ordering Activity's applications. The license fee payable by Ordering Activity for each copy of the Program installed on a Machine shall be determined by multiplying the number of CPUs on the Machine by the applicable rate, each as specified on the Purchase Order. In the event that the number of CPUs on the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the GSA Price List.

"Data Storage Unit" or "DSU" The unit of measurement used in the Storage License types which quantifies the volume of data stored inside the main database of a Program. Certain Programs tend to compress data to an amount less than the raw data. The amount of compression applied to the data may vary depending on the characteristics of the data and the data types Used in the Program.

"Documentation" Installation instructions and user manuals supplied with the Program.

"ESD" means Electronic Software Download.

"Floating License" or "FL" The limited right to install the Program on any number of workstation Machines, provided that at any given instant in time the total number of such workstation Machines on which Ordering Activity is permitted to Use the Program simultaneously may not exceed the number of licenses purchased.

"Internet Access License" or "IC" The limited right to permit "External Internet Seats" to access a licensed Program, provided the number of CPUs on the Machine on which the licensed Program is installed is no greater than the quantity of such licenses purchased, as specified on the Purchase Order. The number of "External Internet Seats" shall be limited only by the capacity of the licensed CPUs. "External Internet Seats" shall mean Seats which access the specified Program via the Internet; provided that the person at such Seat is not acting in the capacity of an employee, agent or independent contractor of Ordering Activity. External Internet Seats may query the Program database and update such database to the extent allowed by Ordering Activity's application, but may not Use the Program to develop or modify applications or perform other programming tasks. Ordering Activity may not Use the specified Program in connection with a website hosted by Ordering Activity on behalf of third parties. An Internet Access License does not cover intranet usage or other internal usage and Ordering Activity must acquire the necessary Seat licenses for all internal usage of the Program. If Ordering Activity purchases (or renews) Support for a Program for which an Internet Access License has been obtained, Ordering Activity shall purchase the same level of Support for the Internet Access License as for such Program. The license fee payable by Ordering Activity for each copy of the Program installed on a Machine shall be

determined by multiplying the number of CPUs on the Machine by the applicable rate, each as specified on the Purchase Order. In the event that the number of CPUs on the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the GSA Price List.

"Machine" A single computer hardware system identified on the applicable Purchase Order running a single copy of the Operating System Software.

"Mainframe Base" or "MB" The basic license fee applicable for certain mainframe Programs based upon the mainframe Machine model set forth in the applicable Purchase Order. For each copy of a Program designated as license type MB, Ordering Activity shall also pay the applicable MSU License fee based upon the then current MSU rating of the mainframe Machine. See also "MSU (Millions of Service Units) License".

"Major Version" A major release of a Program containing new features and functions.

"MSU (Millions of Service Units) License" or "MU" The license fee payable by Ordering Activity for each copy of the Program shall be determined by multiplying the number of MSUs for the Machine by the applicable rate and adding the applicable Mainframe Base rate thereto, all as specified in the applicable Purchase Order. In the event that the number of MSUs for the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order, and pay an additional amount determined by multiplying the incremental number of MSUs by the then applicable MSU rate for the Program and adding any incremental base rate fee thereto, all as set forth in the GSA Price List. The number of users shall be limited only by the capacity of the licensed MSUs, and may include internal users within the Ordering Activity's organization, and external users outside of the Ordering Activity's organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Ordering Activity's applications.

"Multi-core Coefficient or Multi-core Scaling Coefficient" The scaling coefficient set forth in the GSA Price List which is applied to License and Support Price to determine the List Price for eligible License Types and Machines.

"Networked License" The limited right for the number of Seats equal to the quantity of such licenses purchased, as specified in the Purchase Order, to directly or indirectly access a Program installed on a licensed Server or Servers in a single network.

"Networked Seat" see "Seat".

"Operating System Software" The operating system software on which the Program is licensed to be Used, as specified on the Purchase Order.

"OT" denotes "other", for products or services included on a Purchase Order, which are not otherwise defined.

"Primary Copy" A licensed copy of the Program provided by SAP Government Support and Services, Inc. or made available by SAP Government Support and Services, Inc. for electronic download, including a copy provided initially as a trial copy.

"Processor" means "Core".

"Program" The object code version of the software product(s) listed in the Purchase Order, as well as any and all Updates and authorized copies. Although the Program media may contain other software products, Ordering Activity is licensed to install and Use only the designated Program.

"Quantity of Licenses" The number of a particular license type, such as (without limitation) Server or Seat, licensed for a particular Program pursuant to a Purchase Order.

"Seat", or "ST" A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant ("PDA"), wireless device or real time device. See "Networked License".

"Secondary Copy" A licensed copy of the Program reproduced by Ordering Activity from the Primary Copy.

"Server" A computer containing software, which permits it to await and fulfill services to other computers.

"Server License" or "SR" The limited right to install a copy of a Program on a Server, for access solely by licensed Seats or licensed Concurrent Users, as applicable.

"Standalone Seat" or "SS" The limited right to install the Program on a single workstation Machine (and not a server Machine) for access solely by the single workstation Machine upon which it resides.

"Standby Concurrent User License" or "SC" The limited right to access and Use a Standby Copy of a Program licensed under a Concurrent User License in the event of an interruption of a production copy of the same Program. See "Concurrent User License".

"Standby Copy" means a copy of a Program pre-installed on a separate Machine for the purpose of processing data duplicated from a production copy of the same Program. The Standby Copy may be accessed and Used in the event of a failure of the production Machine for the duration of such failure.

"Standby CPU License" or "SF" The limited right to access and Use a Standby Copy of a Program licensed under a CPU License in the event of an interruption of a production copy of the same Program.

"Standby Server License" or "SV" The limited right to install a Standby Copy of a Program licensed under a Server License in the event of an interruption in the operation of a production copy of the same Program.

"Storage License" or "TB" The limited right to store data in a Program such that the quantity of DSUs Used is no greater than the number of DSUs licensed, as specified in the Purchase Order. The license fee payable by Ordering Activity shall be determined by multiplying the number of DSUs by the applicable rate, each as specified on the Purchase Order. In the event the number of DSUs in a Program is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental storage capacity by the then applicable rate per DSU set forth in the GSA Price List. Storage may only be licensed in whole DSUs, and the number of DSUs shall be rounded up to the next higher whole DSU when determining the number of Storage Licenses required.

"Storage Development and Testing License" or "DB" The limited right to store data in a Program up to the number of DSUs licensed, and to Use such data for development and testing purposes only and not in a parallel production environment. See "DSU" and "Storage License."

"Storage Standby License" or "SB" The limited right to store data in a Standby Copy of a Program up to the number of DSUs licensed, and to Use such data in the event of an interruption of a production copy of the same Program. See "DSU" and "Storage License".

"Support" The technical support plan selected by Ordering Activity.

"Updates" means error corrections, maintenance releases and Major Versions of the Program made available to Ordering Activity under certain Sybase Support plans.

"Upgrade" means (i) transfer of the Program to a Machine of a higher Sybase Machine Class, i.e. transfer to a Machine that provides greater processing capacity, or (ii) Ordering Activity migration from one edition of a Program to another edition with increased functionality, e.g. from Advanced Edition to Enterprise Edition.

"Use" means to install, load, view, print, update, access, utilize, or store the Program.

2. UTILIZATION LIMITATIONS

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation shall be subject to the following:
 - (1) Title to and ownership of the software and documentation shall remain with the SAP, unless otherwise specified. SAP reserves all rights in and title to the Software and Documentation not expressly granted to an Ordering Activity;
 - (2) Software licenses are by site, by ordering activity and as specified in the applicable order.
 - (3) The ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of SAP. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, SAP standard commercial guarantee/warranty as stated herein will apply to this contract.
 - (1) **GUARANTEE.** The term of the warranty is one year for software and 90 days for Maintenance. All guarantees are from date of shipment.
 - (2) **PROGRAMS.** For the term indicated above, Contractor, through SAP, warrants that the Programs, when properly used, will operate in all material respects in conformity with SAP's published specifications for such version, and the Program media shall be free of defects.
 - (3) **MAINTENANCE.** Contractor, through SAP, warrants that technical support and on-site technical support shall be performed by qualified individuals in accordance with generally accepted industry standards.
 - (4) **DOCUMENTATION.** The Program documentation is provided as is, without any warranty.c
- b. The Contractor and SAP disclaims all other warranties and conditions, express and implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose. No warranty is made regarding the results on any Program or Maintenance or that all errors in the Programs will be corrected or that the Program's functionality will meet the Ordering Activity's requirements.
- c. **REMEDIES.** For any breach of the above warranties, the Ordering Activity's remedy and SAP NS2 entire liability shall be:
 - (1) **PROGRAMS.** The correction of Program errors that cause breach of the warranty, or, if Licensor is unable to make the Program operate as warranted, the Ordering Activity shall be entitled to a refund of the license fees paid for the affected Program.

(2) MAINTENANCE. The correction or reperformance of the maintenance, or if Licensor is unable to perform the maintenance as warranted, the Ordering Activity shall be entitled to recover the fees paid to Licensor for the unsatisfactory maintenance.

- d. WARRANTY EXCLUSION AND LIMITATION OF DAMAGES. Except as expressly set forth herein, there are no warranties expressed or implied in no event will Licensor be liable to the Ordering Activity for consequential damages as defined in the Uniform Commercial Code, Section 2-715 in effect in the District of Columbia as of January 1, 1973, i.e.: Consequential damages resulting from Licensor's breach include (a) any loss resulting from general or particular requirements and needs of which Contractor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty.

4. TECHNICAL SERVICES

Provided the ordering activity has entered into a valid maintenance agreement, the Contractor, through SAP NS2NS2, without additional charge to the ordering activity, shall provide a hot line technical support number 1-800-8SYBASE for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 7:00AM to 5:30PM Eastern time.

5. MAINTENANCE OF GENERAL PURPOSE INFORMATION TECHNOLOGY SOFTWARE (Maintenance as a Product CLIN 132-32 or 132-33)

- a. ELIGIBILITY REQUIREMENTS: The following two support requirements will apply:
- (1) The ordering activity must purchase the same support level for all SAP products licensed on a given CPU.
 - (2) The ordering activity must purchase the same support level for all their CPUs at a given site. The ordering activity may choose to reinstate support for a license which has not been supported for some period of time. The charge to the ordering activity for reinstatement of maintenance support will be based on maintenance charges that would have been incurred from date of cancellation to date of reinstatement.
- b. The Contractor through SAP shall provide first year maintenance support in accordance with the terms and conditions for the SAP Secure Enterprise Support as describe herein below. The support fees shall be calculated at 22% of the Net License Fees for the software supported under the SAP Secure Enterprise Support Plan.
- c. Maintenance may be renewed directly with SAP for one-year options on the anniversary of each project (CBS) as long as SAP NS2 offers support for the products.
- d. Effective January 1, 2013, support renewal for pervious "Sybase" customers will be migrated at the time of their annual renewal to the SAP Secure Enterprise Plan in accord with SAP's current practices.

SAP NS2 Secure Enterprise Support

1. Definitions:

- 1.1 "Go-Live" marks the point in time from when, after implementation of Enterprise Support Solution or an upgrade of Enterprise Support Solution, the Enterprise Support Solution can be used by Ordering Activity for processing real data in live operation mode and for running Ordering Activity's business in accordance with the Agreement.
- 1.2 "Ordering Activity Solution" shall mean Enterprise Support Solutions and any other software licensed by Ordering Activity from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.
- 1.3 "Production System" shall mean a live SAP system used for running Ordering Activity's internal business operations and where Ordering Activity's data is recorded.
- 1.4 "SAP NS2 Enterprise Support" shall mean the global support program delivered commercially by SAP as further defined herein.
- 1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Ordering Activity Solutions and focusing on a specific functional aspect of Ordering Activity's business.
- 1.6 "Secure Enterprise Support" shall mean the support program delivered under this Addendum comprising SAP Enterprise Support and Secure Support as further defined herein.
- 1.7 "Secure Support" shall mean the secure support delivered commercially by SAP NS2 as further defined herein, delivered in conjunction with SAP Enterprise Support.
- 1.8 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information on an incident by interview or by analysis in a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.
- 1.9 "Top-Issue" shall mean issues and/or failures identified and prioritized jointly by SAP and Ordering Activity in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on Ordering Activity's core Production System.
- 1.10 "SAP Software" shall mean the "Sybase" or "SAP" software, previously licensed by the Ordering Activity, under separate Agreement, to be supported under this SAP Secure Enterprise Support Plan.

2. Scope:

SAP NS2 ENTERPRISE SUPPORT. Ordering Activity may request and Contractor, through SAP NS2, shall provide through this Attachment A, to such degree as SAP makes such services generally available within the Geographic Scope of the GSA Schedule Contract, SAP Enterprise Support services. SAP Enterprise Support is delivered by Contractor through SAP and currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- During mainstream maintenance for an SAP release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Software change management, such as changed configuration settings or Enterprise Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Ordering Activity with up to five days remote support services per calendar year from SAP solution architects
 - to assist Ordering Activity in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Ordering Activity's business process requirements.
 - to give Ordering Activity guidance in form of knowledge transfer sessions, weighted one day, for defined SAP software/applications or Global Support Backbone components. Currently, content and session schedules are stated at <http://service.sap.com/enterprisesupport>. Scheduling, availability and delivery methodology is at SAP's discretion.
- SAP gives Ordering Activity access to guided self-services as part of SAP Solution Manager Enterprise Edition, helping the Ordering Activity to optimize technical solution management of selected Enterprise Support Solutions.
- Configuration guidelines and content for Enterprise Support Solutions are usually shipped via SAP Solution Manager Enterprise Edition. Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as integral parts of Enterprise Support Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Enterprise Support Solutions and/or the applicable Documentation for the Enterprise Support Solutions.

Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Ordering Activity custom code and enhancement packages and other Enterprise Support Solutions updates. Each check is conducted for one specific modification in one of Ordering Activity's core business process steps. Ordering Activity is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- **Modification Justification:** Based on Ordering Activity's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Enterprise Support Solutions which may fulfill the Ordering Activity's requirements (for details see <http://service.sap.com/>).
- **Custom Code Maintainability:** Based on Ordering Activity's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to Ordering Activities and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that Ordering Activities can implement into their SAP system. SAP Notes also document related issues, Ordering Activity questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- SAP Solution Manager Enterprise Edition – as described in Section 2.4

Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions, including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global 24x7 root cause analysis and escalation procedures in accordance with section 2.1below.
- Root Cause Analysis for Custom Code: For Ordering Activity custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3, applicable for priority “very high” and priority “high” messages. If the Ordering Activity custom code is documented according to SAP’s then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Ordering Activity in issue resolution

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Ordering Activity’s testing activities with functionalities that currently include:
 - Test administration for Enterprise Support Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - Quality Management for management of “Quality-Gates”
 - SAP-provided tools for automatic testing
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Ordering Activity with the optimization of the end-to-end operations of Ordering Activity’s SAP Software Solution.
 - Run SAP Methodology: Assists Ordering Activity with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution. For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP’s customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1 Global Message Handling and Service Level Agreement (SLA). When Ordering Activity reports malfunctions, SAP supports Ordering Activity by providing information on how to remedy, avoid and bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Ordering Activity may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. For further details on definitions of message priorities see SAP Note 67739 which will be provided upon written request.

In exceptional cases, Ordering Activity may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that License provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements (“SLA” or “SLAs”) shall apply to all Ordering Activity support messages that SAP accepts as being Priority 1 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of Purchase Order. As used herein, “Calendar Quarter” is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

2.1.1 SLA for Initial Response Times: Priority 1 Support Messages (“Very High”). SAP shall respond to Priority 1 support messages within one (1) hour of SAP’s receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work

cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages: SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Ordering Activity's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message ("SLA for Corrective Action"). In the event an action plan is submitted to Ordering Activity as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Ordering Activity actions to support the resolution process; (iv) to the extent possible, planned dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP ("Processing Time"). Processing Time does not include the time when the message is on status "Customer Action" or "SAP Proposed Solution", whereas (a) the status Customer Action means the support message was handed over to Ordering Activity; and (b) the status SAP Proposed Solution means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Ordering Activity agrees to reduce the priority level of the message.

2.1.3 Prerequisites and Exclusions.

2.1.3.1 Prerequisites. The SLAs shall only apply when the following prerequisites are met for all support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of Enterprise Support Solutions which are classified by SAP with the shipment status "unrestricted shipment"; (ii) support messages are submitted by Ordering Activity in English via the SAP Solution Manager Enterprise Edition in accordance with SAP's then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018 which will be provided upon written request) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance.

For Priority 1 support messages, the following additional prerequisites must be fulfilled by Ordering Activity: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Ordering Activity makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Ordering Activity's obligations hereunder; and (c) a Ordering Activity contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

2.1.3.2 Exclusions. For SAP Enterprise Support in particular the following types of Priority 1 messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Ordering Activity (including without limitation those developed by SAP Custom Development and/or by SAP subsidiaries) except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications is expressly excluded even if these country versions were created by SAP or an affiliate of SAP; (iii) the root cause behind the support message is not a malfunction, but a missing functionality ("development request") or the support message is ascribed to a consulting request; and (iv) support messages referred for handling under Secure Support.

2.1.4 Service Level Credit.

2.1.4.1 Contractor, through SAP, shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Ordering Activity submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any Calendar Quarter during the Enterprise Support term, Ordering Activity agrees that SAP shall be deemed to have met the its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

2.1.4.2 Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLAs are not met (each a "Failure"), the following rules and procedures shall apply: (i) Ordering Activity shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Ordering Activity's claim; (iii) Ordering Activity shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP's ability to reach the SLAs; (iv) subject to this Section 2.1.4, if based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit ("SLC") to Ordering Activity's next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Ordering Activity's SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Ordering Activity's SAP Enterprise Support Fee for such Calendar Quarter. Ordering Activity bears the responsibility of notifying SAP of any SLCs within one month after the end of a Calendar Quarter in which a Failure occurs. No penalties will be paid unless notice of Ordering Activity's well-founded claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Ordering Activity's sole and exclusive remedy with respect to any alleged or actual Failure.

2.2 SAP Support Advisory Center. For Priority 1 and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP's support organization for mission critical support related requests (the "Support Advisory Center"). The Support Advisory Center will perform the following mission critical support tasks: (i) remote support for Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24x7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Ordering Activity's IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Ordering Activity; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.

As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Ordering Activity's Contact Person and SAP NS2 shall jointly perform one mandatory setup service ("Initial Assessment") for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Ordering Activity's Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for mission critical support related requests. The available local or global dial-in numbers are shown in SAP Note 560499 which will be provided upon written request.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

2.3 SAP Continuous Quality Check. In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the "Continuous Quality Check" or "CQC") per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Ordering Activity and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Ordering Activity, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Ordering Activity with an action plan and/or written recommendations.

Ordering Activity acknowledges that all or part of the CQC sessions may be delivered by SAP NS2 and/or a certified SAP NS2 partner acting as SAP NS2's subcontractor and based on SAP's CQC standards and methodologies. Ordering Activity agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder.

Ordering Activity acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Ordering Activity fails to follow these guidelines, SAP NS2 is not obliged to deliver the yearly CQC to the Ordering Activity.

2.4 SAP Solution Manager Enterprise Edition under SAP Enterprise Support.

2.4.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Agreement and is solely for the following purposes under SAP Enterprise Support: (i) delivery of SAP Enterprise Support and support services for Ordering Activity Solutions including delivery and installation of software and technology maintenance for Enterprise Support Solutions; and (ii) application lifecycle management for Ordering Activity Solutions and for any other software components and IT assets licensed or otherwise obtained by Ordering Activity from third parties provided such third party software, software components and IT assets are operated in conjunction with Enterprise Support Solutions and are required to complete the Ordering Activity's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Ordering Activity as part of the Enterprise Support Solutions.
- For application lifecycle management as outlined under section 2.4.1(ii) above, Ordering Activity does not require a separate Package license to SAP CRM. Ordering Activity must hold appropriate Named User licenses to Use SAP Solution Manager.

2.4.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Ordering Activity shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.4.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Ordering Activity Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.4.3 SAP, in its sole discretion, may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.4.

2.4.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Addendum and by Named Users licensed by Ordering Activity subject to the licensed rights for the Software and exclusively for Ordering Activity's SAP-related support purposes in support of Ordering Activity's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Enterprise Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Ordering Activity shall be entitled to allow any of its employees to use web self-service in the SAP Solution Manager Enterprise Edition during the term of this Addendum for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Ordering Activity Solutions and Additional Supported Assets.

2.4.5 Use of SAP Solution Manager Enterprise Edition may not be offered by Ordering Activity as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Agreement may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Ordering Activity's internal business operations under and in accordance with the terms of this Addendum.

SAP NS2 SECURE SUPPORT. Ordering Activity may request and SAP NS2 shall provide, to such degree as SAP NS2 makes such services generally available within the Geographic Scope of the SAP NS2 GSA Schedule, Secure Support services. Secure Support is delivered in the United States only and currently includes a secure remote connection, secure backoffice, secure support advisor, secure support setup, and certain secure continuous quality checks as specified herein.

2.5 SAP NS2 Secure Remote Connection and Secure Backoffice. A US citizen-staffed secure backoffice located in a US facility shall be provided during the standard hours of 9:00AM to 6:00PM United States Eastern time, Monday through Friday, excluding holidays observed by SAP NS2 ("Standard Hours") for the following Ordering Activity site(s).

The Ordering Activity shall define the location in the Delivery Order where Secure Support is to be delivered.

Under SAP Enterprise Support, Ordering Activity messages are initially received and addressed by SAP's global support organization. When connection is needed to the Ordering Activity network in cases where login is required for problem resolution, Ordering Activity requires that login can only be performed by US citizen resources over an approved communication channel that terminates in the continental US. Under Secure Support, SAP NS2 provides this secure channel and maintains a controlled area from which the secure connection will terminate in a NS2-provided, or if agreed a Ordering Activity-provided, personal computer ("PC"). This PC shall contain and be prepared to run the agreed upon and Ordering Activity-provided Client VPN software, which will enable the SAP NS2 secure connection to the Ordering Activity solution infrastructure for the provision of Secure Support. Ordering Activity shall provide all required customer-specific hardware/software, remote secure connections and access permissions to its production systems for delivery of the Secure Support service by SAP NS2.

The following operational process applies for SAP NS2 Back office message support:

1. Ordering Activity is responsible for identification of issues, initial issue analysis performed by Ordering Activity's support center, and opening of customer message tickets through SAP Service Marketplace or SAP Solution Manager under SAP Enterprise Support.
2. Under SAP Enterprise Support, SAP Global Support Centers provide the first level of SAP support to review, analyze and provide any known resolution to issues or provide global 24x7 root cause analysis and escalation procedures. SAP Global Development will be engaged as appropriate to determine a resolution or identify additional information needed from Ordering Activity.
3. Under Secure Support, neither SAP Global Support Centers nor SAP Global Development is authorized to access Ordering Activity's system directly and will be instructed in internal SAP procedures not to request such access. In the event access is required by SAP, the SAP NS2 Secure Backoffice will be engaged through internal SAP procedures to continue issue resolution as authorized by Ordering Activity and facilitate communication between Ordering Activity and SAP Global resources.
4. Under Secure Support, resolutions to issues will be documented and made available to Ordering Activity in accordance with SAP's standard procedures.

2.6 SAP NS2 Secure Support Advisor. SAP NS2 shall designate one (1) resource in the SAP NS2 organization to be Ordering Activity's Secure Support contact person (the "Secure Support Advisor"). The SAP NS2 Secure Support Advisor shall perform the following support tasks: (i) assist Ordering Activity in planning, coordinating, scheduling and delivering (in cooperation with Ordering Activity) the Secure Support Setup and Secure Continuous Quality Checks described below; (ii) advising Ordering Activity on the implementation of recommended actions resulting from delivery of SAP NS2 Secure Support services; (iii) acting as an additional escalation contact for exception handling in the SAP Enterprise Support process; (v) providing guidance in cases in which Secure Continuous Quality Checks, an action plan, and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solution, and (vi) providing access for remote certification of the SAP Customer Center of Expertise if requested by Ordering Activity.

The SAP NS2 Secure Support Advisor is available via telephone and email during the Standard Hours specified above. SAP NS2 shall make available a substitute SAP NS2 Secure Support Advisor during any periods where the designated SAP NS2 Support Advisor is unavailable. All Services of the designated SAP NS2 Support Advisor shall be coordinated with Ordering Activity's designated SAP NS2 Secure Support Program Manager, as described in Section 3.1 below.

2.7 SAP NS2 Secure Support Setup. Ordering Activity and SAP NS2 agree to jointly conduct an initial Secure Support Setup as part of Secure Support. The Secure Support Setup includes: (i) securing remote connectivity between Ordering Activity and SAP NS2; (ii) reviewing best practices for collaboration with SAP NS2 and SAP Active Global Support; (iii) reviewing Ordering Activity solution landscape; and (iv) review of Ordering Activity project roadmap.

2.8 SAP NS2 Secure Continuous Quality Checks. Certain Secure Continuous Quality Checks shall be delivered through the secure remote connection established under SAP NS2 Secure Support. Ordering Activity shall coordinate such SAP NS2 Secure Continuous Quality Checks with the Secure Support Advisor. In case of critical situations related to the SAP Software Solution (such as, implementation, upgrade, migration or Top Issues), SAP NS2 will provide at least one Secure Continuous Quality Check (the "SAP NS2 Secure Continuous Quality Check" or "Secure CQC") per year for each SAP Software Solution. The Secure CQC portfolio of services for Ordering Activity includes:

- SAP GoingLive™ Check for an implementation project going productive.
- SAP GoingLive™ Functional Upgrade Check for an upgrade to a higher release.

The CQC portfolio of services may be changed by SAP NS2 from time to time. The CQC may consist of one or more manual or automatic remote Service Sessions. SAP NS2 may deliver further Secure CQC's in cases where vital alerts reported by SAP EarlyWatch Alert or in those cases where Ordering Activity and the SAP NS2 Secure Support Advisor mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact priorities of a Secure CQC, shall be mutually agreed upon between the parties. At the end of a Secure CQC, SAP NS2 will provide Ordering Activity with an action plan and/or written recommendations. Ordering Activity agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of Secure CQC's hereunder.

In the event the Effective Date of the Period of Performance is after September 30th of the year in which the Effective Date occurs, Ordering Activity shall not be entitled to receive the above mentioned Secure CQC services for the remainder of such calendar year.

Ordering Activity understands and agrees that to the extent the SAP Software contains products and/or software components licensed or resold by SAP from a third party, the support of such third party is required to deliver a CQC.

Ordering Activity acknowledges that SAP NS2 limits Secure CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 20 working days before the planned delivery date.

2.9 Ordering Activity-Specific Security Requirements and Instructions. The parties acknowledge that neither the SAP Enterprise Support nor Secure Support described herein contemplates the processing or storage of Ordering Activity data, Ordering Activity Proprietary Information, or Ordering Activity customer information by SAP and SAP NS2, and that Ordering Activity provides access to such information or data, if at all, solely to the extent necessary for SAP and SAP NS2 to perform its obligations under this Addendum. Notwithstanding anything to the contrary herein, with respect to the SAP Enterprise Support and SAP NS2 Secure Support delivered hereunder, Ordering Activity may, in its sole discretion, and at any time, elect not to allow, or to otherwise limit: (a) remote access by SAP and SAP NS2, and/or (b) connectivity by and between Ordering Activity and SAP and SAP NS2. Ordering Activity acknowledges that Ordering Activity's failure to establish remote access or connection as described in Section 3.2 below, or to limit such access, may lead to delays in message handling and the provision of corrections, or may render SAP and SAP NS2 unable to provide the full scope of SAP Enterprise Support and Secure Support. Ordering Activity shall not be entitled to any refund or credit of Secure Enterprise Support Fees paid, and SAP and SAP NS2 shall not be held liable for any delay or inability to meet the support obligations set forth in this Addendum to the extent such delay or inability results from Ordering Activity's limitation of access. Accordingly, this Section 2.9 describes the Ordering Activity-specific security requirements that are mutually agreed to be applicable to this Addendum.

2.9.1 Security Requirements Applicable to SAP Enterprise Support.

SAP provides information regarding its commercial security practices related to the global delivery of SAP Enterprise Support, including the technical and organizational measures implemented by SAP designed to ensure the lawful processing of personal data in accordance with EU data protection laws and any audits and certifications. Upon Ordering Activity's written request, SAP shall provide its information document, "Security and Data Protection@SAP," for Ordering Activity's review and information purposes. SAP agrees to comply with the "Security and Data Protection@SAP" information document. SAP represents that, to the best of its knowledge, it engages in best practices with respect to the hiring of its employees, in compliance with applicable local law and regulations, including administering background checks in certain locations, including such background checks as are consistent with best practices of SAP in the relevant location and consistent with applicable law.

2.9.2 Security Requirements Applicable to Secure Support.

2.9.2.1 Clearances and Representations. SAP NS2NS2 represents that: (i) it is a subsidiary company of SAP AG and operates under a Proxy Agreement administered by the US Defense Security Service to mitigate foreign ownership, control, and influence; (ii) it has successfully completed security inspection process requirements of, and currently holds a Top Secret facility security clearance granted by, the US Department of Defense (DoD); and (iii) the SAP NS2 employees assigned with responsibility for delivering Secure Support to Ordering Activity hereunder are U.S. citizens and some individuals have successfully completed the security clearance process requirements of, and currently hold Secret or Top Secret security clearances. During the term of this Addendum upon Ordering Activity's written request the SAP NS2 Facility Security Officer (FSO) shall verify such clearance(s) in writing to Ordering Activity and promptly notify Ordering Activity of any downgrade in status.

2.9.2.2 System Access Instructions. SAP NS2 shall comply with Ordering Activity's requirements stated below for access to Ordering Activity's systems:

- Ordering Activity prohibits remote access by, and disclosure of any data to SAP under SAP Enterprise Support
- SAP NS2 shall treat any Ordering Activity data, user access, passwords or system information provided by Ordering Activity to SAP NS2 as Proprietary Information under applicable provisions of the Agreement.
- Ordering Activity shall control, and shall grant or limit secure remote access to SAP NS2 at its sole discretion, and SAP NS2 shall only access those systems that Ordering Activity authorizes SAP NS2 to access.
- In the event Ordering Activity discloses classified, controlled unclassified, or sensitive Ordering Activity data to SAP NS2 as part of any authorized remote access, SAP NS2 shall disclose such data only in accordance with the instructions provided by Ordering Activity pursuant to Section 3.2 (xv) below.

- e. If access is granted by Ordering Activity pursuant to Section 2.9.2.2 (c) above, Ordering Activity shall provide SAP NS2 personnel with any user authorizations and passwords to access its systems and may revoke or terminate such authorizations as Ordering Activity deems appropriate from time to time. Ordering Activity shall grant SAP NS2 access to Ordering Activity systems or personal information only if such access is essential for the performance of the support hereunder, and SAP NS2 shall comply with Ordering Activity's instructions for such access.
- f. If onsite support is provided, Ordering Activity requires that personnel delivering support onsite at Ordering Activity facilities be approved by Ordering Activity and adhere to Ordering Activity's reasonable requirements and rules for access, and for use of Ordering Activity's electronic resources. Ordering Activity has the right to request removal or replacement of personnel at its sole discretion. Ordering Activity understands and agrees that schedules, resource availability, and costs are impacted by delays in processing approvals for such access.
- g. Export Controls for Data. Ordering Activity may disclose to SAP NS2 as part of any authorized remote access, data which may be subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Provided Ordering Activity identifies the data as being subject to such controls, SAP NS2 shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder in handling any such data.

3. Ordering Activity's Responsibilities.

3.1 Ordering Activity Program Management. In order to receive SAP NS2 Secure Enterprise Support hereunder, Ordering Activity shall designate a qualified English speaking SAP NS2 Secure Enterprise Support Program Manager within its SAP NS2 Customer Center of Expertise and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. The SAP NS2 Secure Enterprise Support Program Manager shall cooperate with the designated SAP NS2 Secure Support Advisor to administer the terms of this support agreement, and shall be Ordering Activity's authorized representative empowered to make necessary decisions for Ordering Activity or bring about such decision without undue delay.

Contact Person Name	Postal Address	Email Address	Desk Telephone Number	Mobile Telephone Number

3.2 Other Requirements. In order to receive SAP NS2 Secure Enterprise Support hereunder, Ordering Activity must:

- (i) Continue to pay all maintenance and support fees in accordance with the Support Plan and the GSA Schedule Contract.
- (ii) Otherwise fulfill its obligations under the Support Plan and the GSA Schedule Contract.
- (iii) For the SAP NS2 Enterprise Support global component of SAP NS2 Secure Enterprise Support, provide and maintain remote access (subject to Section 2.9.1 above) via a technical standard procedure as defined by SAP and grant SAP NS2 all necessary authorizations, in particular for global problem analysis as part of global message handling. Such global remote access, otherwise agreed to in writing by the Parties, shall be granted without restriction regarding the nationality of the SAP or SAP NS2 employee(s) who process support messages or the country in which they are located. Ordering Activity acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP or SAP NS2 unable to provide help in an efficient manner. Ordering Activity understands that message tickets opened by Ordering Activity through SAP Service Marketplace or SAP Solution Manager are initially processed through SAP Global Support Centers worldwide before routing for secure handling by SAP NS2. It is Ordering Activity's responsibility to ensure that no sensitive information is transmitted when opening message tickets. The necessary software components must also be installed for support services. For more details, see SAP Note 91488, which shall be provided upon written request.
- (iv) For the Secure Support component of SAP NS2 Secure Enterprise Support, provide and maintain a secure remote connection (subject to Section 2.9.2 above) between the SAP NS2 secure facility and Ordering Activity's production systems via a technical standard procedure acceptable to SAP NS2; provide all required Ordering Activity-specific hardware/software, if any, agreed for use by SAP NS2, and grant SAP NS2 all necessary authorizations and permissions necessary for SAP NS2 Secure Support delivery. Ordering Activity acknowledges that SAP NS2 is not able to fulfill its SAP NS2 Secure Support obligations during periods of time when Ordering Activity denies SAP NS2 access to the Enterprise Support Solutions. In the event Ordering Activity discloses Ordering Activity data to SAP NS2 as part of authorized secure remote access, and such data is rated classified, controlled unclassified, or sensitive as defined by the US National Industrial Security Program (NISPO), or is subject to US export control laws including ITAR and EAR, Ordering Activity shall identify and provide its instructions to SAP NS2 for the handling of such data, including its instructions for allowing access to such data by SAP NS2.
- (v) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 5 below.
- (vi) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vii) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Ordering Activity's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308, which shall be provided upon written request, for information on setting up this service.

- (viii) Perform the Initial Assessment as described in Section 2.2 and implement all recommendations of SAP classified as mandatory.
- (ix) Establish a global connection between Ordering Activity's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Enterprise Support Solutions and Ordering Activity's SAP Solution Manager Enterprise Edition installation. Ordering Activity shall maintain the solution landscape and core business processes in Ordering Activity's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Ordering Activity shall document any implementation or upgrade projects in Ordering Activity's SAP Solution Manager Enterprise Edition system.
- (x) To fully enable and activate the SAP Solution Manager Enterprise Edition, Ordering Activity shall adhere to the applicable documentation.
- (xi) Ordering Activity agrees to maintain adequate and current records of all Modifications and, if needed, promptly provide such records to SAP NS2.
- (xii) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xiii) Inform SAP NS2 without undue delay of any changes to Ordering Activity's installations and Named Users and all other information relevant to the Enterprise Support Solutions.
- (xiv) Provide, configure and maintain any Ordering Activity-provided hardware/software and any Ordering Activity-provided authorizations/permissions for SAP NS2 personnel to provide Secure Support delivery without the need for SAP NS2 personnel to travel to Ordering Activity or other non-SAP NS2 locations.
- (xv) Identify and mark any classified, controlled unclassified, or sensitive Ordering Activity data that may be disclosed to SAP NS2 in connection with the delivery of Secure Support and identify the safeguards Ordering Activity requires from SAP NS2 to protect such data and any procedures/limitations for allowing access to such data by SAP NS2.
- (xvi) Ordering Activity acknowledges that any additional background investigations or security clearances required by Ordering Activity may limit the SAP NS2 staff available to provide the delivery of SAP NS2 Secure Support.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise. In order to leverage the full potential value delivered as part of SAP NS2 Enterprise Support, Ordering Activity is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Ordering Activity as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Ordering Activity's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE. The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Ordering Activity support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from the Ordering Activity and/or any of its affiliates provided such affiliates are entitled to use the SAP NS2 Enterprise Support Solutions under the Agreement. In this role the Customer COE shall also be empowered to function as an interface to SAP NS2 to take all action and decisions needed to avoid unnecessary modification of Enterprise Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Enterprise Support Solutions and the Customer COE within the Ordering Activity's organization.
- CQC and other remote services planning: Ordering Activity regularly engages in a service planning process with SAP NS2. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. Ordering Activity must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Ordering Activity has started using at least one of the Enterprise Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. SAP NS2 Secure Enterprise Support Fees.

SAP NS2 Secure Enterprise Support Service at the site(s) specified above shall commence as of the first day of the month following initial delivery of the Software under Appendices to the Agreement, and shall be paid annually in advance. Upon issuance of an Order by the Ordering Activity, after the Initial Term (as defined in the applicable Appendix, or order documents under the Agreement), and subject to the Agreement and this Secure Enterprise Support Addendum, Secure Enterprise Support Service shall renew at the beginning of each calendar year for the subsequent one year period.

The annual Secure Enterprise Support Fee for the Software licensed under Appendices to the Agreement is priced at the then current SAP NS2 Secure Enterprise Support Factor in effect (currently 22%) multiplied by the net total amount of the Net License Fee for the licensed Software as specified in Appendices to the Agreement. SAP agrees that the Secure Enterprise Support Factor shall remain at 22% until December 31, 2016. Thereafter, the Secure Enterprise Support Factor is subject to change once during a calendar year upon ninety (90) days' notice to Ordering Activity. Secure Enterprise Support Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net 30 days from date of invoice. Any Secure Enterprise Support Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect. Upon issuance of a modification to these terms, SAP Secure Enterprise Support offered by SAP NS2 may be changed annually by SAP NS2 at any time upon ninety (90) days prior written notice to Ordering Activity. After the Initial Term, the Secure Enterprise Support Fees and any limitations on increases are subject to Ordering Activity's compliance with the Customer COE requirements specified in Section 5 above.

6. **Delivery.** Delivery of the Secure Enterprise Support hereunder will be made by making the support available for download or other electronic transmission to Ordering Activity specified on a delivery order. Ordering Activity agrees not to request any physical delivery of SAP NS2 Secure Enterprise Support and should it errantly occur that any such delivery will be rejected by the Ordering Activity. Ordering Activity agrees that if Secure Enterprise Support becomes temporarily unavailable electronically, such support deliverable is extended until electronic delivery is available or until Contractor and Ordering Activity contractually agree on another form of delivery.

7. Termination.

7.1 Unless otherwise agreed in an Order or by modification to such Order, Secure Enterprise Support may be terminated by either party with three (3) months written notice (i) prior to the end of the Initial Term and (ii) thereafter, prior to the start of the following renewal period. Any termination provided in accordance with above will be effective at the end of the then-current Secure Enterprise Support period during which the termination notice is received by the respective party. Notwithstanding the foregoing, Contractor may terminate SAP NS2 Secure Enterprise Support after one (1) month written notice of Ordering Activity's failure to pay NS2 Secure Enterprise Support Fees. Notwithstanding the foregoing, any such Termination as defined above shall be in accordance with the terms and conditions of the GSA Schedule Contract.

7.2 For the avoidance of any doubt, termination of SAP NS2 Secure Enterprise Support or selection to enroll in another type of SAP NS2 Support Services by Ordering Activity pursuant to SAP NS2 Support Services selection provisions under this Support Plan Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of SAP NS2 Secure Enterprise Support or partial selection of SAP NS2 Secure Enterprise Support by Ordering Activity shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents or this Addendum.

8. **Verification.** To check the compliance with the terms of this Support Plan Agreement, Contractor with the assistance of SAP NS2 shall be entitled to periodically monitor (at least once annually and in accordance with SAP standard procedures) (i) the correctness of the information Ordering Activity provided and (ii) Ordering Activity's usage of the Solution Manager Enterprise Edition in accordance with the rights and restrictions set out in Section 2.4.
9. **Reinstatement.** In the event Ordering Activity elects not to commence SAP NS2 Secure Enterprise Support upon the first day of the month following initial delivery of the Software, or SAP NS2 Secure Enterprise Support is otherwise terminated pursuant to Section 7 above or declined by Ordering Activity for some period of time, and is subsequently requested or reinstated, SAP NS2 will invoice Ordering Activity the accrued SAP NS2 Secure Enterprise Support Fees associated with such time period and, if applicable, a reinstatement process fee in accord with SAP NS2's then current practices.

10. Other Terms and Conditions.

1.1 The scope of SAP NS2 Secure Enterprise support offered by Contractor, through SAP NS2 may be changed annually by Contractor at any time upon three months prior written notice and written modification to these terms and conditions.

1.2 Ordering Activity hereby confirms that Ordering Activity has obtained all licenses for the Ordering Activity Solutions.

1.3 In the event that Ordering Activity is entitled to receive one or more services per calendar year, (i) Ordering Activity shall not be entitled to receive such services in the first calendar year if the Effective Date of Period of Performance is after September 30 and (ii) Ordering Activity shall not be entitled to transfer a service to the next year if Ordering Activity has not utilized such service.

1.4 FAILURE TO UTILIZE SECURE ENTERPRISE SUPPORT PROVIDED BY SAP NS2 MAY PREVENT SAP NS2 FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP NS2 CANNOT BE HELD RESPONSIBLE.

1.5 In the event SAP licenses third party software to Ordering Activity under the Agreement, SAP NS2 shall provide Secure Enterprise Support on such third party software to the degree the applicable third party makes such support available to SAP NS2. Ordering Activity may be required to upgrade to more recent versions of its operating systems and databases to receive Secure Enterprise Support for such third party software. If the respective vendor offers an extension of support for its product, SAP NS2 may offer such extension of support under a separate written agreement for an additional fee.

1.6 SAP NS2 Secure Enterprise Support is provided according to the current maintenance phases of SAP Software releases which can be provided in response to a written request.

1.7 SAP NS2 shall provide SAP NS2 Secure Enterprise Support to Ordering Activity under the terms of the GSA Schedule contract and this Attachment A, including, but not limited to, the sections addressing the following issues: limitation of liability, proprietary or confidential information and rights in intellectual property. However, the parties agree that, other than as to damages resulting from the unauthorized use or disclosure of proprietary information, the amount of damages hereunder shall be limited to the fees paid under this Addendum. Such terms shall prevail over any conflicting or inconsistent terms and conditions, and any additional terms shall be deemed void, that may appear on any purchase order or other document furnished by Ordering Activity to SAP NS2.

1.8 Ordering Activity is responsible for making the necessary internal arrangements for the carrying out of the services hereunder, and in the case of on-site services, if any, for providing an appropriate work environment such as office space, parking, network connectivity, and access to appropriate systems, personnel, printers, fax machines, photocopiers, projectors, and other important facilities. Ordering Activity agrees that the services shall be subject to change if the necessary resources are not provided.

1.9 Those provisions of the GSA Schedule contract addressing limitation of liability, proprietary or confidential information and rights in intellectual property shall survive any termination of a Purchase Order, as to the services provided hereunder.

1.10 SAP shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the Secure Enterprise Support services, whether or not developed for Ordering Activity.

ELIGIBILITY REQUIREMENTS: The following two support requirements will apply:

(1) The ordering activity must purchase the same support level for all SAP products licensed on a given CPU.

(2) The ordering activity must purchase the same support level for all their CPUs at a given site.

SAP NS2 SECURE PRODUCT SUPPORT FOR LARGE ENTERPRISES SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP NS2, for certain large enterprises as further defined herein ("SAP NS2 Secure Product Support for Large Enterprises" or "SAPNS2 Secure PSLE") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "PSLE Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions:

1.1 "Go-Live" marks the point in time from when, after implementation of Licensee's PSLE Solutions or an upgrade of PSLE Solutions, can be used by Licensee for processing real data in live operation mode and for running Licensee's business in accordance with the Schedule contract.

1.2 "Net License Value" shall mean the undiscounted license fees for PSLE Solutions licensed by Licensee and Licensee Affiliates under the Schedule contract minus all discounts granted but before any migration credit is applied.

1.3 "Licensee Solution(s)" shall mean PSLE Solutions and any other software licensed by Licensee from third parties, provided such third party software is operated in conjunction with PSLE Solutions.

1.4 "Production System(s)" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be provided upon written request.

1.6 "Top-Issues" shall mean issues and/or failures identified and prioritized jointly by SAP NS2 and Licensee in accordance with the SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Licensee's core Production System.

1.7 "SAP NS2 Support Services" shall mean SAP NS2 Secure Product Support for Large Enterprises or SAP NS2 Secure Enterprise Support.

2. Scope of SAP NS2 Secure Product Support for Large Enterprises. Licensee may request and Contractor, through SAP NS2, shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Secure Product Support for Large Enterprises services. SAP NS2 Secure Product Support for Large Enterprises currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed PSLE Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.

- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or PSLE Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP NS2 gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping Licensee to optimize technical solution management of selected PSLE Solutions.
- Configuration guidelines and content for PSLE Solutions are usually shipped via SAP Solution Manager Enterprise Edition
- Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as part of PSLE Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the PSLE Solutions and/or the applicable documentation for the PSLE Solutions.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to PSLE Solutions (for more information refer to Section 2.1).
- Global 24x7 escalation procedures.

Access to Services Content

- SAP NS2 shall provide Licensee with access to SAP's remote services methodology. Licensee may use this content to perform proactive support services for the PSLE Solutions.

SAP NS2 Secure Product Support for Large Enterprises Roadmap Planning

- Up to two times per calendar year, Licensee and SAP NS2 will perform a joint telephone conference to exchange information about Licensee's current or planned global projects to implement or upgrade Secure PSLE Solutions, to review Top-Issues and risk mitigation plans and to discuss quality assurance topics with regard to end-to-end operations of and support for Licensee's SAP Software Solutions, and to generally align on collaboration between Licensee and SAP NS2 in the area of support activities and delivery of SAP NS2 Secure Product Support for Large Enterprises services for Licensee's SAP Software Solutions.
- Licensee can contact the local support manager of SAP NS2 to request a scheduling of such telephone conference.
- If mutually agreed between Licensee and SAP NS2, such planning can also take place in the course of an onsite meeting at a mutually agreed location.
- Licensee acknowledges that a successful planning requires the support of Licensee's Customer Center of Expertise.

SAP Solution Manager Enterprise Edition as described in Section 2.2.

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems - to monitor available resources and collect system status information of the PSLE Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - o Test administration for Secure PSLE Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - o Quality Management for management of "Quality-Gates"
 - o SAP-provided tools for automatic testing
 - o SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - o End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - o Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution.
 For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time.

In exceptional cases, Licensee may also contact SAP NS2 by telephone. For such contact (and as otherwise provided) SAP NS2 requires that Licensee provides remote access as specified in Section 3.2(iii).

SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739 which will be provided upon written request) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP NS2 can communicate if SAP NS2 assigns the problem message to an overseas SAP NS2 support center, unless otherwise agreed to in writing by the Parties. Until these conditions are fulfilled, SAP may not be able to start message handling or to continue message handling.

2.2 SAP Solution Manager Enterprise Edition under SAP NS2 Secure Product Support for Large Enterprises

2.2.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP NS2 Secure PSLE: (i) delivery of SAP NS2 Secure PSLE and support services for Licensee Solutions including delivery and installation of software and technology maintenance for PSLE Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with SAP NS2 Secure PSLE Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the PSLE Solutions.

For application lifecycle management as outlined under section 2.2.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.2.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.2.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.2.3 SAP may update from time to time on the SAP Service Marketplace the use cases for SAP Solution Manager Enterprise Edition under this Section 2.2.

2.2.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP NS2 Secure PSLE other than those listed above is subject to a separate written agreement, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self-service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.2.5 In the event Licensee terminates SAP NS2 Secure PSLE, Licensee's use of SAP Solution Manager Enterprise Edition under SAP NS2 Secure PSLE shall cease.

2.2.6 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP NS2 Secure Product Support for Large Enterprises Program Management. In order to receive SAP NS2 Secure Product Support for Large Enterprises hereunder, Licensee shall designate a qualified English speaking contact within its SAP NS2 Customer Center of Expertise (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP NS2 Secure Product Support for Large Enterprises hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all SAP NS2 Secure Product Support for Large Enterprise Service Fees in accordance with the Schedule contract terms.
- (ii) Otherwise fulfill its obligations under the Schedule contract.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP NS2 and grant SAP NS2 all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP NS2 employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP NS2 unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488 which will be provided upon written request.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.

- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 which will be provided upon written request for information on setting up this service.
- (vii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP NS2 and a connection between the PSLE Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (viii) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (ix) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (x) Submit all error messages via the then current SAP NS2 support infrastructure as made available by SAP NS2 from time to time via updates, upgrades or add-ons.
- (xi) Inform SAP NS2 without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the SAP NS2 Secure PSLE Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise In order to leverage the full potential value delivered as part of SAP NS2 Secure Product Support for Large Enterprises, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP NS2 support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP NS2 recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE: The Customer COE must fulfill the following basic functions:

- **Support Desk:** Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- **Contract administration:** Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- **Coordination of innovation requests:** Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the SAP NS2 Secure PSLE Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of SAP NS2 Secure PSLE Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- **Information management:** Distribution of information (e.g. internal demonstrations, information events and marketing) about PSLE Solutions and the Customer COE within Licensee's organization.
- **Service Planning:** Licensee regularly engages in a service planning process with SAP NS2. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the PSLE Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure that covers the basic functions (primary certification). Licensee has the option to pursue advanced certification of their Customer COE. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. Revenue Thresholds.

5.1 Licensee shall be only eligible to receive SAP NS2 Secure Product Support for Large Enterprises from the date at which Licensee informs SAP NS2 in writing about the meeting of both of the following criteria: (i) the aggregate of the overall yearly expenditure of Licensee, including and all Licensee Affiliates, exceeds or is equal to USD 7,000,000. (seven million dollars) (the "Maintenance Threshold") for: a) SAP Secure Enterprise Support, b) SAP Secure Product Support for Large Enterprises c) Maintenance for software licensed from Business Objects; and (e) MaxAttention; and (ii) the Net License Value exceeds or is equal to USD 40,000,000 (forty million dollars) (the "License Threshold").

5.2 Renewal of SAP NS2 Secure Product Support for Large Enterprises is subject to the Revenue Thresholds set forth in Section 5.1.

5.3 Licensee shall not receive any refund, including, but not limited to, previously paid maintenance fees.

6. Fees for SAP NS2 Secure Product Support for Large Enterprises. SAP NS2 Secure Product Support for Large Enterprises Fees shall be paid annually in advance.

7. Other Terms and Conditions.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

7.3 FAILURE TO UTILIZE SAP NS2 SECURE PRODUCT SUPPORT FOR LARGE ENTERPRISES PROVIDED BY CONTRACTOR THROUGH SAP NS2 MAY PREVENT SAPNS2 FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL

PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH CONTRACTOR AND SAP NS2 CANNOT BE HELD RESPONSIBLE.

7.4 In the event SAP NS2 through Contractor licenses third party software to Licensee under the Schedule contract, SAPNS2 through Contractor shall provide SAP NS2 Secure Product Support for Large Enterprises on such third party software to the degree the applicable third party makes such support available to SAP NS2. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP NS2 Secure Product Support for Large Enterprises. If the respective vendor offers an extension of support for its product, Contractor through SAP NS2 may offer such extension of support under a separate written agreement for an additional fee.

7.5 SAP NS2 Secure PSLE is provided according to the current maintenance phases of SAP software releases as stated in SAP's website for which a secure link will be provided upon issuance of an order.

SAP Public Services, Inc.
3999 West Chester Pike
Newtown Square, PA 19073

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **SAP Public Services, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SAP PUBLIC SERVICES, INC.

SAP PUBLIC SERVICES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

- 1.1 "Add-on" means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.
- 1.2 Reserved.
- 1.3 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided hereunder.
- 1.4 Reserved.
- 1.5 "Business Partner" means a legal entity that requires access to the Software in connection with Ordering Activity's internal business operations, such as customers, distributors and/or suppliers of Ordering Activity.
- 1.6 Reserved.
- 1.7 "Documentation" means SAP's documentation which is delivered or made available to Ordering Activity with the Software hereunder.
- 1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.9 "Modification" means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).
- 1.10 Reserved.
- 1.11 "SAP Materials" means any software, programs, tools, systems, data, or other materials made available by SAP to Ordering Activity in the course of the performance hereunder including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Ordering Activity to SAP relating to the Software and Documentation.
- 1.12 "SAP Support" means SAP's then-current SAP support offering specified in the applicable Order Forms and made available to Ordering Activity as stated in the applicable SAP Support Schedule incorporated herein (also available at www.sap.com/company/legal/index.epx) as of the effective date of the first Software Order Form issued under these GTCs. Such SAP Support Schedule is incorporated herein by reference. For the avoidance of doubt, such SAP Support Schedule shall apply to all Order Forms issued under these GTCs unless otherwise agreed by the parties.
- 1.13 "Software" means (i) any and all software products licensed to Ordering Activity hereunder as specified in Software Order Forms hereto, all as developed by or for SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Ordering Activity hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.
- 1.14 Reserved.
- 1.15 "Territory" means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the GTC.
- 1.16 "Third Party Software" means (i) any and all software products and content licensed to Ordering Activity hereunder as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Ordering Activity hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.
- 1.17 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.
- 1.18 "Use Terms" means, with regard to Software specified in a Purchase Order, metric definitions and product-specific terms described in Exhibit 1 hereto or in an applicable Purchase Order.

2. LICENSE GRANT.

2.1 License.

- 2.1.1 Subject to Ordering Activity's compliance with all the terms and conditions herein, Contractor grants to Ordering Activity a non-exclusive, perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Ordering Activity's internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in a Purchase Order, unless terminated in accordance with Section 5 herein. This license does not permit Ordering Activity (without being limited specifically to such

restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials; (iii) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms herein; or (iv) use Software components other than those specifically identified in the Purchase Order, even if it is also technically possible for Ordering Activity to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Ordering Activity's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.2 Ordering Activity agrees to install the Software only on information technology devices (e.g., hard disks or central processing units) identified by Ordering Activity pursuant to this Attachment A and that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Ordering Activity must hold the required licenses as stated herein and in the applicable Purchase Orders, for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Ordering Activity or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Attachment A relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule, a Schedule, an Order Form, or an Amendment.

2.2 Reserved.

2.3 Outsourcing Services. With SAP's prior written consent, Ordering Activity may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Ordering Activity in connection with the business of Ordering Activity for which the Software is herein licensed provided: (i) Ordering Activity and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms herein prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Ordering Activity shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Ordering Activity as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Ordering Activity or any other party, or in connection with such services provider's own business operations; (v) Ordering Activity shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition. Upon SAP request, Ordering Activity shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

3. Reserved.

4. DELIVERY.

4.1 Reserved.

4.2 Delivery of the Software and SAP Support. Contractor, through SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Ordering Activity. Risk of loss passes at the time of such electronic delivery. Ordering Activity agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Ordering Activity.

5. Reserved.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Reservation of Rights. The SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP AG (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Ordering Activity in Section 2 and 6.3 herein. Except for the rights set forth in Section 6.3 herein, Ordering Activity is not permitted to modify or otherwise make derivative works of the Software. Any such unauthorized works developed by Ordering Activity, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP or SAP AG.

6.2 Protection of Rights. Ordering Activity shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software in any manner. Reverse engineering of the Software and other SAP Materials is prohibited. Ordering Activity is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Ordering Activity must not change or remove SAP's copyright and authorship notices.

6.3 Modifications/Add-ons.

6.3.1 Conditioned on Ordering Activity's compliance with the terms and conditions of this Attachment A, Ordering Activity may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Attachment A, and shall be permitted to use Modifications and Add-ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1(a) herein. Ordering Activity shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. All Add-ons developed by SAP (either independently or jointly with Ordering Activity) and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Ordering Activity agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. All Add-ons developed by or on behalf of Ordering Activity without SAP's participation ("Ordering Activity Add-on"), and all rights associated therewith, shall be the exclusive property of Ordering Activity subject to SAP's rights in and to the Software; provided, Ordering Activity shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Ordering Activity Add-ons. SAP retains the right to independently develop its own

Modifications or Add-ons to the Software, and Ordering Activity agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

6.3.2 Any Modification developed by or on behalf of Ordering Activity without SAP's participation or Ordering Activity Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Attachment A and/or provide Ordering Activity with access to the Software to which Ordering Activity is not directly licensed; nor permit mass data extraction from Software to any non-SAP software, including use, modification saving or other processing of data in the non-SAP software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP products.

6.3.3 Ordering Activity covenants, on behalf of itself and its successors and assigns, not to assert against Contractor, SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any Modifications developed by or on behalf of Ordering Activity without SAP participation or Ordering Activity Add-ons, or any other functionality of the SAP Software accessed by such Modification developed by or on behalf of Ordering Activity without SAP participation or Ordering Activity Add-on.

7. PERFORMANCE WARRANTY.

7.1 Warranty. Contractor warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP Support or under warranty), Ordering Activity or third-party software. Contractor does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Ordering Activity's business requirements. Provided Ordering Activity notifies Contractor in writing with a specific description of the Software's nonconformance within the warranty period and Contractor validates the existence of such nonconformance, Contractor will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Ordering Activity's remedy under this warranty.

7.2 Express Disclaimer. CONTRACTOR AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. This disclaimer does not apply to any warranties expressly provided in a Contractor contract with the U.S. Government.

EXHIBIT 1 TO ATTACHMENT A - PRODUCT SPECIFIC USE TERMS

The terms set forth below ("Use Terms") apply to any Named Users and Packages (both as defined in Section 1.1.1 hereof) licensed by an Ordering Activity pursuant to the Schedule contract. Except as otherwise set forth herein, each capitalized term referenced in these Use Terms shall have the meaning given it in this Attachment A.

1. LICENSING PRINCIPLES / RULES OF USE

1.1 Definitions

1.1.1 As used in these Use Terms: 1) each Software and/or Third Party Software (as defined in this Attachment A) product licensed pursuant to this Attachment A referencing these Use Terms may be referred to as a "Software Package" (when referencing only Software) or "Third Party Software Package" (when referencing only Third Party Software) or "Package" (when referencing both Software and Third Party Software); 2) "Named User" shall mean any individual authorized by Ordering Activity to Use (in accordance with the terms of this Attachment A) a Package, including without limitation employees of its Affiliates or its Business Partners; 3) "Named User License" shall mean the Metric and Licensed Level applicable to each Named User; 4) "Package License" shall mean the Metric and Licensed Level applicable to each Package; 5) "Metric" shall mean a) when referenced in the context of a Named User, the individual Named User category and type (and corresponding Named User definition setting for such Named User's Use rights) as further described in Section 2.1 hereof -and- b) when referenced in the context of a Package, the individual business metric corresponding with each Package as further described in Section 2.2 hereof; 6) "Licensed Level" shall mean a) when referenced in the context of a Named User, the quantity of Metric for which each individual Named User category and type is licensed -and- b) when referenced in the context of a Package, the quantity of Metric for which each individual Package is licensed; and 7) "Order Form" shall mean the order document for the Named Users and Packages licensed under this Attachment, including order documents placed directly with SAP or through an authorized reseller, distributor, OEM or other authorized partner of SAP.

1.2 Standard License Principles / Rules of Use

1.2.1 Named User License & Package License Required. Except as otherwise specifically provided in Sections 1.3.2 and 3 hereof with respect to applicability of Named User Licenses, 1) the Use of any Package requires both a Named User License and a Package License; 2) Ordering Activity needs to hold a Named User License for any individual accessing any Package, and such Named User License shall define the extent to which such individual may Use the Package, such Use of the Package in all cases being further subject to the Package License and otherwise in accordance with the terms of the Schedule contract.

1.2.2 Additional Named User Rules for SBOP and Legacy SBOP Software Not Licensed For Standalone Use. "SBOP" and "Legacy SBOP" shall mean any Software identified as SBOP or Legacy SBOP, respectively, in Exhibit 1 to these Use Terms. Unless otherwise specifically set forth herein, all references to "SBOP" shall be deemed to include any licensed Software identified under any Order Form as "Legacy SBOP"; however, references to "Legacy SBOP" shall only mean any licensed Software specifically identified as "Legacy SBOP" on Exhibit 1. Any licensed SBOP may only be Used by individuals licensed as a Developer User, Expert User, Business Analytics Professional User or BI Limited User, and such Use shall be in accordance with each individual's

respective Named User type (and subject to the applicable Licensed Level(s) for such Software). Any licensed Legacy SBOP may only be Used by individuals licensed as a Developer User, Expert User, Business Analytics Professional User, BI Limited User, or Business Information User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software).

- 1.2.3 Runtime Software. Licensed Package(s) may utilize limited functionality of other Packages, including but not limited to SAP NetWeaver Foundation, for which Ordering Activity does not hold a license ("Runtime Software"). Until Ordering Activity has expressly licensed the Runtime Software, Ordering Activity's Use of such Runtime Software is limited to access by and through the licensed Package(s), and any permitted Modifications thereto for the sole purpose of enabling performance of the licensed Package(s). In the event Ordering Activity Uses a Package to build and/or operate a custom developed or third party application, additional licenses may be required.
- 1.2.4 Country / Language Versions and Availability Restrictions. There are no applicable country/language specific versions licensed by Ordering Activity from SAP unless otherwise specifically stated in an Order Form. Packages may be subject to availability restrictions. Information about such restrictions including country availability, supported languages, supported operating systems and databases may be provided through the Product Availability Matrix (PAM) published at www.service.sap.com/pam or otherwise included in the Documentation.
- 1.3. Exceptional License Principles / Rules of Use for Special License Scenarios
 - 1.3.1 This Section 1.3 sets forth the exceptional license principles / rules of Use for the following special license scenarios ("Special License Scenarios"), and, to the extent the exceptional license principles / rules of Use for any Special License Scenario identified in this Section 1.3 contradict the standard license principles / rules of Use set forth in the Schedule contract and Section 1.2 hereof, then the terms of this Section 1.3 shall control over those contradicting terms in Section 1.2 hereof.
 - 1.3.2 Standalone Use. Software is licensed solely for Standalone Use if identified as such in the applicable Order Form. SBOP Software licensed from any resellers, distributors or other third parties may be Used solely for Standalone Use, unless otherwise agreed by SAP in writing in the applicable Order Form. "Standalone Use" means the Software (and any corresponding Third Party Software) may not be Used to access, directly or indirectly, in any manner whatsoever, any other Software and/or Third Party Software licensed from SAP, or an authorized reseller, distributor, OEM or other authorized partner of SAP. Software licensed for Standalone Use, however, may be Used with other Software (and any corresponding Third Party Software) that is licensed for Standalone Use.

As a rule, the Use of Software licensed for Standalone Use does not require a Named User License in addition to the Package License for the respective Software itself. For avoidance of doubt, all SBOP and/or Sybase Software licensed by a Business Objects entity or a Sybase entity prior to its legal integration with a successive SAP entity is deemed licensed for Standalone Use only.
 - 1.3.2.1 Standalone Use of SBOP and Legacy SBOP Software. Use of SBOP and Legacy SBOP licensed for Standalone Use does require a Named User License in addition to the Package License for the actual SBOP or Legacy SBOP, respectively.. The only Named User types authorized to Use SBOP licensed for Standalone Use are SAP Application Standalone Business Analytics Professional User, or SAP Application Standalone BI Business Analyst Limited User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software). The only Named User types authorized to use Legacy SBOP licensed for Standalone Use are SAP Application Standalone Business Analytics Professional User, SAP Application Standalone BI Limited User, or SAP Application Business Information Viewer User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software).
 - 1.3.3 Restricted License. If Ordering Activity acquired the Software bundled or otherwise provided in combination with or for use with a third party product ("OEM Application") from a third party, Ordering Activity has acquired a Restricted License. Ordering Activity may use each licensed copy of the Software only in conjunction with the OEM Application with which it was provided. Accessing data that is not specifically created or used by the OEM Application is in violation of this license. If the OEM Application requires the use of a data mart or data warehouse, the Software may be used with the data mart or data warehouse only to access data created or processed by the OEM Application. Restricted Licenses may not be combined with unrestricted licenses in the same Deployment.
 - 1.3.4 Subscription License. Unless otherwise agreed in writing between the parties, if the Software is licensed on a subscription basis, Ordering Activity is granted a non-exclusive and non-transferable license to use the Software for a twelve-month term, renewable annually at Licensor's then current rate or such other term as mutually agreed in writing by the parties.
 - 1.3.5 Development License. Unless otherwise agreed in writing between the parties, if Ordering Activity receives a development license, you may use the number and type of licenses acquired only to develop or test such developments. A development license cannot be used in or transferred to a production environment.
 - 1.3.6 Update License. Unless otherwise agreed in writing between the parties, if you receive the Software as an update to a previously licensed product, your license to use the Software is limited to the aggregate number of licenses you have acquired for the previous product. If you choose to use the Software and the previous product simultaneously, the aggregate number of licenses used to access the Software and the previous product may not exceed the aggregate number of licenses you acquired for the previous product.
 - 1.3.7 Promotional License. Unless otherwise agreed in writing between the parties, if you received the Software as a special offer or promotional license ("Promotional License"), you may only use the Promotional Licenses with a new Deployment. Promotional Licenses may not be added to or used with an existing Deployment or Project.
 - 1.3.8 Evaluation/Not for Resale License. Unless otherwise agreed in writing between the parties, an Evaluation or Not for Resale License may be used only for the number and type of licenses specified and for the period specified on the Software packaging,

ordering or shipping documentation. Upon expiration of such specified period, the Software associated with an Evaluation or Not For Resale license will not function unless Ordering Activity has obtained applicable permanent license keys. If the ordering or shipping documentation specifies a particular project, the Software may be used only with that project. An Evaluation License may only be used for evaluation purposes and may not be used for production purposes. Notwithstanding any other provision of this Attachment A, Software provided under an Evaluation or Not for Resale License are provided "AS-IS" without warranty of any kind, express or implied. An Evaluation License or Not for Resale License may be terminated by SAP upon written notice at any time.

2. **Metrics**

2.1 **Named User Principles and Metrics**

2.1.1 **Named User Principles.** Except as otherwise specifically provided in Sections 1.3.2 and 3 hereof with respect to applicability of Named User Licenses, only appropriately licensed Named Users may Use a Package, and such Use shall be subject to the "Named User License" and the "Package License", and be otherwise in accordance with the terms of the Attachment A. The total number of licensed SAP Application Limited Professional Users must under no circumstances exceed the sum of licensed SAP Application Professional Users and SAP Application Business Expert Users. The transfer of a Named User License from one individual to another may only be done in if the individual to which the Named User License is assigned (i) is on vacation, (ii) is absent due to sickness, (iii) has his/her employment terminated, (iv) is moved into a new job function which no longer requires him/her to Use any Packages or (v) is subject to a condition that is otherwise agreed by SAP.

2.1.2 **Important Note for Ordering Activities with Contracts from 2006 and Earlier.** Such Ordering Activities may have licensed one of the following previous user types: mySAP.com Users, SAP Business Suite Users, SAP ERP Users, Individual SAP solutions Users. Ordering Activities that have already licensed one or several of the above user types are permitted to license additional users of the same user types. Such Ordering Activities are not permitted to license SAP Application Users within their existing license contract. Ordering Activities with contracts from 2006 or later that contain SAP Application users are not permitted to license any of these previous user types.

2.1.2 **Named User Metric – Categories, Types and Corresponding Definitions.**

Named User Metrics, including categories, types and corresponding definitions, are stated in Exhibit 2, which is incorporated herein by reference.

2.2 **Package Principles and Metrics**

2.2.1 **Package Principles.** Each Package is licensed based upon the Metric applicable to it, and in no case may Use of a Package exceed the License Level for which the Package is licensed.

2.2.2 **Package Metrics – Types and Corresponding Definitions.**

Package Metrics, including types and corresponding definitions, are stated in Exhibit 2, which is incorporated herein by reference.

3. **PACKAGE SPECIFIC TERMS / USE RULES**

3.1 **Package Licenses.** A Package License for any Package referenced in Exhibit 3 shall include, and be subject to, the specific terms / Use rules applicable to such Package as outlined in Exhibit 3, which is incorporated herein by reference.

3.2 **Applicability.** This Section 3.2 applies to any Package (including, without limitation, databases) licensed pursuant to an Order Form and identified as a Third Party Software (including databases) in such Order Form (as used herein, "Third Party Software Package") and control over any conflicting terms set forth in the Attachment A. All Third Party Software Packages are restricted for Use solely in conjunction with the particular Package intended by SAP to be used therewith or with which SAP provides the Third Party Software Package, and Third Party Software Packages may not be used with any other Package, or on an individual basis. Unless otherwise specifically provided in Section 3 of the Use Terms, any Use of the Third Party Software Packages (whether productive or non-productive) shall count against the Licensed Level for any applicable Metric.

3.2.1 **Exceptions from Attachment A for Third Party Software Packages.**

3.2.1.1 Section 6.3 (Modification / Add-on) of Attachment A shall not apply to any Third Party Software Packages. Ordering Activity shall not make Modifications or Add-ons to Third Party Software Packages, or otherwise modify Third Party Software Packages unless expressly authorized by SAP in writing.

3.3 **Third Party Databases.**

3.3.1. If a runtime database is licensed and the Order Form does not exclude any Packages licensed thereunder from such runtime database license, then the following terms shall govern Ordering Activity's Use of such runtime database:

3.3.1.1. Ordering Activity may only Use the runtime database licensed pursuant an Order Form referencing these Use Terms in conjunction with its Use of the Packages licensed pursuant to such Order Form. In the event Ordering Activity Uses the licensed runtime database other than as specified in this paragraph, a full use license, including programming tools, must be licensed directly from an authorized vendor.

3.3.2. If a runtime database is licensed and the Order Form excludes certain Software Packages licensed thereunder from such runtime database license ("Excluded Components"), then the following terms shall govern Ordering Activity's Use of such runtime database:

- 3.3.2.1 Ordering Activity may only Use the runtime database licensed pursuant an Order Form referencing these Use Terms in conjunction with its Use of the Packages licensed pursuant to such Order Form that are not Excluded Components. In the event Ordering Activity Uses the licensed runtime database other than as specified in this paragraph, a full use license, including programming tools, must be licensed directly from an authorized vendor.
- 3.3.2.2 The Excluded Components may require a database product. Respective to the Excluded Components: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of the Excluded Components; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.
- 3.3.3 If a runtime database is not licensed, then the following terms shall apply:
- 3.3.3.1 The Packages licensed pursuant to an Order Form referencing these Use Terms may require a database product. Respective to such Packages: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of such Software and/or third party software; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.
- 3.4 **Standalone Use for Third Party Databases.**
- If an Order Form referencing these Use Terms includes a Standalone Use restriction, then the following terms shall apply:
- 3.4.1 The Packages licensed pursuant to an Order Form referencing these Use Terms may require a database product. Respective to Packages: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of such Software and/or third party software; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.
- 3.5 **Pass-Through Terms.**
- Use of third party database products and address directories may be subject to additional terms and conditions required by SAP's suppliers. Such additional terms and conditions are set forth in Exhibit 4, "Pass-Through Terms for Third Party Databases" and Exhibit 5 "Pass-Through Terms for Address Directories," respectively.
- 3.6 **Open Source Software.**
- Applicable specific conditions related to certain open source products made available by SAP are part of the applicable product documentation and/or delivered with the Software as a "README" file and apply to Ordering Activity's use of any such open source products. The definition of open source can be found under www.opensource.org/.
- 3.7 **SAP Best Practices.**
- Software Packages may be delivered with settings and master data that have been pre-configured to address the requirements of a specific industry sector or country (SAP Best Practices). SAP Best Practices are not licensed for use on productive systems.
- 3.8 **SAP Tools.**
- The Software, particularly the ABAP Workbench and SAP NetWeaver, contains software tools. Ordering Activity may only use these tools to program Modifications or to create Add-ons to the SAP software in accordance with this Attachment A. The tools may not be transferred, either in whole or in part, into modified or created software.
- 3.9 **Function Modules.**
- The Software may contain function modules, which are stored in a function library. Some of these function modules carry a release indicator for transfer into modified or newly created software. Only these function modules may be transferred by the Ordering Activity into Modifications or Add-ons to the software. The function modules may not be modified or decompiled unless otherwise permitted under this Attachment.

Exhibit 1 - Legacy SBOP and SBOP Software

Legacy SBOP

Business Intelligence
SAP BusinessObjects BI Starter Package
SAP BusinessObjects BI Package (CPU)

SAP BusinessObjects BI Package (user)

SBOP

Business Intelligence	Use Rights that do not require a named user license
BA&T SAP BusinessObjects BI Suite (user)	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against predefined reports
BA&T SAP BusinessObjects BI Suite (Concurrent Session license ("CS"))	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against predefined reports
BA&T SAP BusinessObjects Business Intelligence Platform (user)	Access platform services and view environment.
BA&T SAP BusinessObjects Business Intelligence Platform (CS)	Access platform services and view environment.
BA&T SAP BusinessObjects Business Intelligence Platform Mobile add-on (user)	View (i.e., refresh and interact) Mobile-enabled content
BA&T SAP BusinessObjects Business Intelligence Platform Mobile add-on (CS)	View (i.e., refresh and interact) Mobile-enabled content
BA&T SAP Crystal Reports (user)	View (i.e., refresh and schedule) reports
BA&T SAP Crystal Reports (CS)	View (i.e., refresh and schedule) reports
BA&T SAP BusinessObjects Web Intelligence (user)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) a predefined report
BA&T SAP BusinessObjects Web Intelligence (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) a predefined report
BA&T SAP BusinessObjects Analysis edition for OLAP (user)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for OLAP (CS)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for Office (user)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for Office (CS)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Dashboard (user)	View (i.e., refresh and interact) dashboard models
BA&T SAP BusinessObjects Dashboard (CS)	View (i.e., refresh and interact) dashboard models
BA&T SAP BusinessObjects Explorer (user)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer (CS)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer accelerated package (user)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer accelerated package (CS)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Integration, version for ESRI GIS software by APOS (CS)	View data from business applications in a report, analysis or dashboard (indirect access)
BA&T SAP BusinessObjects Integration, version for ESRI GIS software by APOS (User)	View data from business applications in a report, analysis or dashboard (indirect access)
BA&T SAP BusinessObjects Predictive Workbench by IBM	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against predefined reports
Enterprise Information Management	
SAP BusinessObjects Operational enterprise information mgmt package	View and drill down on information, read-only access to the application.
SAP BusinessObjects Analytical enterprise information mgmt package	View and drill down on information, read-only access to the application.
BA&T SAP BusinessObjects Data Services	View and drill down on information, read-only access to the application.
BA&T SAP BusinessObjects Information Steward	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Information Steward Multi-Source Integrators by MITI Add-on	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Event Insight	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Federator	View and drill down on reports, read-only access to the application.

BA&T SAP BusinessObjects Data Integrator (DI)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Quality Management (DQM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects DQM, version for SAP Solutions	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Quality Management SDK	View and drill down on reports, read-only access to the application.
GRC	
BA&T SAP BusinessObjects Access Control	Managers, executives and auditors who receive alerts, access reports and dashboards. End users who submit access requests or self-services. Access request approvers, certification reviews and remediation actions.
BA&T SAP BusinessObjects Process Control	Users who view reports & analytics. Such as control testing results, state of 'compliance health' of the organization reports, control –risk coverage reports, or reports on state of control testing for a process or organization.
BA&T SAP BusinessObjects Risk Management	Users designated or acting as a risk owner to review and test assumptions and make adjustments, user who utilize the system for reports or supporting audits
BA&T SAP BusinessObjects GTS, Export	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Import	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Restitution	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Trade Preferences	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Bundle	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Goods Movement with EMCS	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Sanction Party List Service	View and drill down on reports, read-only access to the application.
BA&T SAP Electronic Customs Processing for AES (Automated Export System)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Electronic Invoicing for Brazil (NFE - Inbound)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Electronic Invoicing for Brazil (NFE - Outbound)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Sustainability Performance Management	View and drill down on reports, read-only access to the application other than users involved in the data-gathering process who respond to approval requests, enter sustainability-related data manually, and respond to surveys/workflows received. Maps to pre-configured roles of approver, business contributor and analyst
EPM	
BA&T SAP BusinessObjects Planning & Consolidation, version for the Microsoft Platform (BPC)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning & Consolidation, version for SAP NetWeaver (BPC)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning, version for the Microsoft Platform	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning, version for SAP NetWeaver	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Consolidation, version for the Microsoft Platform	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Consolidation, version for SAP NetWeaver	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning & Consolidation, SAP NetWeaver Platform Access Component	Not Applicable
BA&T SAP BusinessObjects Planning & Consolidation, Microsoft Platform Access Component	Not Applicable
BA&T SAP BusinessObjects Strategy Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Spend Performance Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Financial Information Management (FIM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Intercompany	View and drill down on reports, read-only access to the application.

BA&T SAP BusinessObjects Financial Consolidation	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Profitability and Cost Management	View Profitability and Cost Management data via MDX connector
BA&T SAP BusinessObjects Supply Chain Performance Management (SCPM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Disclosure Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Notes Management	View and drill down on reports, read-only access to the application.
Mid Market solutions for Business Intelligence	
BA&T SAP BusinessObjects Edge BI, standard package (user)	View (i.e. refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration (user)	View (i.e. refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management (user)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, standard package (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, standard package NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI Publishing Add-On	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.

Exhibit 2 - Named User Metrics and Package Metrics

Metrics Used with Named Users

SAP Application Developer User is a Named User authorized to access the development tools provided with the licensed Software for the purpose of making Modifications and/or Add-ons to the licensed Software and also includes the rights granted under the SAP NetWeaver Developer User and SAP Application Employee User.

SAP Application Business Expert User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and also includes the rights granted under the SAP Application Professional User.

SAP Application Professional User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Limited Professional User.

SAP Application Limited Professional User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Business Information User. The license agreement has to define in detail the limited use rights being performed by such Limited Professional User.

SAP Application Business Information User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with licensed Legacy SBOP, and reports created through Use of licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals. Each SAP Application Business Information User also includes the rights granted under the SAP Application Employee User.

SAP Application Employee User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) travel planning / expense reporting self-services, (iii) perform procurement self-services, and (iv) room reservation self-services. Each SAP Application Employee User also includes the rights granted under the SAP E-Recruiting User, SAP Learning User and the SAP Application ESS User.

SAP Application Employee Self-Service User is a Named User authorized to perform the HR self-services role of employee time and attendance entry supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals. Each SAP Application ESS User also includes the rights granted under the SAP Application Employee Self-Service Core User and the SAP Human Capital Performance Management User.

SAP Application Employee Self-Service Core User is a Named User authorized to perform the following HR self-services roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) employee records maintenance, (ii) employee directory, and (iii) benefits and payment services. Further, an ESS Core User is also authorized to access "Non-SAP Content" that resides on Ordering Activity's "SAP Portal", so long as accessing such Non-SAP Content does not require or result in any Use of the licensed Software (beyond access to such Non-SAP Content as it resides on Ordering Activity's SAP Portal). As used in this ESS Core User definition, (i) "Non-SAP Content" means information created through no Use of the licensed Software and (ii) "SAP

Portal” means any portal created by Ordering Activity Using SAP Enterprise Portal Software (as provided with the licensed SAP NetWeaver Software) which provides appropriately licensed Named Users a common access point by which to Use licensed SAP Software.

SAP Application HANA Administrator User is a Named User authorized to perform all roles supported by licensed HANA Software (excluding the right to make Modifications and/or Add-ons) where Used solely in conjunction with Non-SAP Applications, and includes the rights granted under the SAP HANA Application Viewer User.

SAP Application Standalone HANA Administrator User is a Named User authorized to perform all roles supported by HANA Software licensed for Standalone Use (excluding the right to make Modifications and/or Add-ons) where used solely in conjunction with specific application(s) that are licensed SAP Proprietary Information (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner subject to the contractual Standalone Use restriction, and includes the rights granted under the SAP HANA Standalone Viewer User.

SAP Application HANA Viewer User is a Named User authorized to Use the licensed HANA Software to enable report reading and viewing functions solely in conjunction with Non-SAP Applications.

SAP Application Standalone HANA Viewer User is a Named User authorized to Use the HANA Software licensed for Standalone Use to enable report reading and viewing functions solely in conjunction with application(s) that are licensed Software or Third Party Software (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner (subject to the contractual Standalone Use restriction).

SAP Application HANA Administrator Upgrade User is a Named User authorized to perform all roles supported by licensed HANA Software (excluding the right to make Modifications and/or Add-ons) where Used solely in conjunction with Non-SAP Applications provided such Named User is also an individual licensed from SAP as an SAP Application HANA Viewer User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application HANA Viewer User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Standalone HANA Administrator Upgrade User is a Named User authorized to perform all roles supported by HANA Software licensed for Standalone Use (excluding the right to make Modifications and/or Add-ons) where used solely in conjunction with specific application(s) that are licensed Software or Third Party Software (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner subject to the contractual Standalone Use restriction provided such Named User is also an individual licensed from SAP as an SAP Application Standalone HANA Viewer User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Standalone HANA Viewer User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Analytics Professional User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and includes the rights granted under the SAP Application BI Limited User. For purposes of clarification, an SAP Application Business Analytics Professional User may extract data from any data source into SBOP and/or push data out of SBOP into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into SBOP where the data source is non-SBOP Software and/or third party software licensed from SAP).

SAP Application Business Analytics Professional Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application BI Limited User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application BI Limited User for so long as Ordering Activity continues to receive support under the license agreement. For purposes of clarification, an SAP Application Business Analytics Professional Upgrade User may extract data from any data source into SBOP and/or push data out of SBOP into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) and such Use is otherwise in accord with the terms of this Attachment (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into SBOP where the data source is non-SBOP Software and/or Third Party Software licensed from SAP).

SAP Application BI Limited User is a Named User who is solely authorized to Use one (1) of the following SBOP components, subject to each SBOP component being licensed: (i) Mobile Designer, (ii) Crystal Reports Designer, (iii) WEB Intelligence Designer, (iv) Explorer Designer, (v) Dashboard Designer, (vi) SAP BusinessObjects Analysis software edition for OLAP, or (vii) SAP BusinessObjects Analysis software edition for Microsoft Office. For purposes of clarification, an SAP Application BI Limited User may extract data from any data source into one (1) of the stated SBOP components (where licensed) and/or push data out of one (1) of the stated SBOP components (where licensed) into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into one (1) of the stated SBOP components where the data source is non-SBOP Software and/or Third Party Software licensed from SAP).

SAP Application Standalone Business Analytics Professional User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) licensed for Standalone Use and also includes the rights granted under the SAP Application Standalone BI Limited User.

SAP Application Standalone BI Limited User is a Named User who is solely authorized to Use one (1) of the following SBOP components, subject to each SBOP component being licensed for Standalone Use: (i) Mobile Designer, (ii) Crystal Reports Designer, (iii) WEB Intelligence Designer, (iv) Explorer Designer, (v) Dashboard Designer, (vi) SAP BusinessObjects Analysis software edition for OLAP, or (vii) SAP BusinessObjects Analysis software edition for Microsoft Office. The SAP Application Standalone BI Limited User also includes the rights granted under the SAP Application Business Information Viewer User.

SAP Application Business Information Viewer User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with licensed Legacy SBOP, and reports created through Use of licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals.

SAP Learning User is a Named User who is authorized to access solely the following learning solutions on SAP's price list, provided that those learning solutions are licensed. A SAP Learning User is not entitled to access other SAP solutions or solution components. The applicable learning solutions offered by SAP comprise the following:

7002075 SAP Learning Solution
7003485 SAP Enterprise Learning Environment
7009559 SAP Acrobat Connect Professional Learning by Adobe
7009558 SAP Acrobat Connect Professional Meeting by Adobe
7009560 SAP Productivity Pak by RWD - excl. North America
7009561 SAP Productivity Pak Help Launch Pad by RWD - excl. North America
7009562 SAP Productivity Composer by RWD - excl. North America
7009563 SAP Productivity Composer Help Launch Pad by RWD - excl. North America
7009639 SAP Productivity Pak by RWD - North America only
7009640 SAP Productivity Pak Help Launch Pad by RWD - North America only
7009641 SAP Productivity Composer by RWD - North America only
7009642 SAP Productivity Composer Help Launch Pad by RWD - North America only

SAP E-Recruiting User is a Named User authorized to access the E-Recruiting engine only. E-Recruiting Users are not entitled to access other SAP solutions or solution components.

SAP Human Capital Performance Management User is a Named User authorized to access the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals to maintain: (i) employee appraisals, (ii) talent and skill profiles, and (iii) profile match up.

SAP Manager Self-Service User is a Named User authorized to perform one or more of the following manager self-services related roles supported by the licensed Software (excluding SBOP): (i) request administrative changes using processes and forms contained within HCM, (ii) create requisition requests and candidate assessments, (iii) perform talent assessments and appraisals, (iv) plan and approve compensation, (v) obtain an budget overviews, (vi) organize project management tasks, (vii) perform planning tasks, (viii) approve travel requests and expenses, and (ix) perform workflow tasks. SAP Manager Self-Service User also includes the rights granted under the SAP Application Employee User.

SAP Banking User is a Named User solely authorized to access the specified industry packages for banks. Banking Users are not entitled to access other SAP solutions or solution components.

SAP Retail Store User is a Named User working in Ordering Activity's retail store as an associate who is solely authorized to perform non-managerial retail store / point-of-sale related roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Employee User.

SAP Logistics User is a Named User solely authorized to perform following tasks for the applicable licensed Supply Chain Execution Software:

- Transportation Management: Looking up a freight contract, tracking a certain shipment and similar activities, update master data (rates, lanes, locations), Transportation request entry, transportation planning on, responding to RFP (request for proposal) for tendering, Event Management (EM) confirmation, charge calculation verification and similar activities.
- Warehouse Management: Confirm goods receipts and putaway, goods issues and picking and stock movements including replenishment, and production staging and enter physical inventory counts.
- Product and Item Traceability: Viewing a serialized and/or any tracked object on ad hoc basis, such as querying its current or past location or ascertaining product genealogy. User accessing product traceability solutions on an ad hoc basis to report goods movement or view traceability reports.

For Ordering Activity employees, the SAP Logistics User also includes the rights granted under the SAP Application Employee User.

SAP Shop Floor User is a Named User working in Ordering Activity's production facilities who is solely authorized to perform one or more of the following roles supported by the licensed Software: (i) display work instructions, and document activities and operations, (ii) confirm goods receipts, goods issues and stock movements, (iii) enter production order confirmations, (iv) record product or production information, e.g. quality inspection results or plant/process/equipment data, (v) enter production issues and related service requests, and (vi) reporting or dashboarding related to items (i)-(v). SAP Shop Floor also includes the rights granted under the SAP Application Employee User.

SAP Maintenance Worker User is a Named User who is a maintenance worker solely authorized to perform one or more of the following roles supported by the licensed Software (excluding SBOP): (i) confirm maintenance notifications, (ii) enter time confirmations, goods issues, stock movements and completion confirmations into maintenance work orders, (iii) enter service requests and service request entry sheets, and (iv) any maintenance activities related to items (i) – (iii). SAP Maintenance Worker User also includes the rights granted under the SAP Application Employee User.

SAP Engineering User is a Named User that is authorized to access the following data and objects solely via the Access Control Component (ACC) of the licensed SAP Collaborative Product Development Package, excluding in all cases access to any data or objects by or through SBOP portfolio products:

- (i) Engineering-Bill-of-Material and Product Structure Management data;
- (ii) Design Documents related to data under (i) in Document Management System (DMS);
- (iii) the Business Context Viewer; and
- (iv) 3D visualization content.

In the case of individuals who are employees of Ordering Activity, the SAP Engineering User also includes the rights granted under the SAP Application Employee User.

SAP Procurement Self-Service and Collaborator User is a Named User who is authorized to perform the following self-service roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals to: (i) create shopping carts or requisitions, check, receive or collaborate items in a requisition, (ii) request sourcing or contracting support, review and/or approve items for sourcing or contracting other than as a personnel manager, participate in RFX scoring, provide supplier feedback, view reports or search system content, and (iii) upload compliance information or recipe component information. Each SAP Procurement Self-Service User also includes the rights granted under the SAP Application ESS User.

SAP Partner Channel User is a Named User who is an employee of Business Partners who is solely authorized to perform one or more of the following channel management functionalities contained within the licensed Software (excluding SBOP): (i) Channel Marketing, (ii) Channel Sales, (iii) Partner Order Management, (iv) Channel Service, (v) Partner & Channel Analytics, and (vi) Partner Management.

SAP Solution Extension Limited User is a Named User solely authorized to Use one (1) Third Party Solution licensed by SAP. SAP Solution Extension Limited Users are not entitled to access other SAP solutions, solution components, or data stored in such solutions. SAP Solution Extension Limited User can only be licensed to access the following product: "SAP extended ECM by Open Text", SAP Digital Asset Management by Open Text and "SAP Intelligence Analysis for Public Sector by Palantir" and SAP Application Visualization by iRise (including the add-on for SRM, add-on for general SAP solutions).

SAP CRM User is a Named User only authorized to Use (excluding the right to make Modifications and/or Add-ons) CRM Software licensed under this Attachment A (if any, the "Licensed CRM Software"). An SAP CRM User may extract data from any data source into any Licensed CRM Software and/or push data out of any Licensed CRM Software into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) and such Use is otherwise in accord with the terms of this Attachment A. An additional SAP Named User License will not be required solely for the one-way extraction of data into Licensed CRM Software where the data source is Software (other than Licensed CRM Software) and/or third party software licensed under this Attachment A.

SAP CRM Rapid Deployment Edition User is a Named User solely authorized to (i) access the SAP CRM Rapid Deployment Edition and (ii) perform SAP ERP order-status checks through SAP CRM. Access to other SAP software requires a SAP Application Business Expert User, a SAP Application Professional User or a SAP Application Limited Professional User license. The rights granted to a SAP CRM Rapid Deployment Edition User are included in the existing SAP Application Business Expert User, SAP Application Professional User and SAP Application Limited Professional User. The SAP CRM Rapid Deployment Edition User also includes the rights granted under the SAP Application Employee User.

SMB Professional User on SAP Business Suite is a Named User authorized to access the same functional scope as in 2005. The exact functional scope can be obtained from the Additional Terms & Conditions Document for SAP Resellers. The license of this user is reserved to already existing SMB Professional User customers.

SAP NetWeaver Gateway User is a Named User who is authorized to Use licensed Software from the SAP Business Suite portfolio solely through a separate application that indirectly accesses the licensed Software via SAP NetWeaver Gateway. Service calls through SAP NetWeaver Gateway may use stateless protocols only. A stateless protocol is one that treats each request for information as an independent transaction that is unrelated to any previous request so that the communication consists of independent pairs of requests and responses.

SAP Platform Advanced User is a Named User who is authorized to Use licensed Software solely through a separate application: A) that (i) adds any new, independent functional components for business processes not contained by the SAP Software, (ii) is developed using a licensed SAP technology, and (iii) connects to and/or communicates through published SAP application program interfaces; and B) which shall in no case (i) enable the bypassing or circumventing of any of the restrictions set forth in this Attachment A, (ii) provide Ordering Activity with access to any Software to which Ordering Activity is not licensed, and/or (iii) permit mass data or metadata extraction from SAP Software to non-SAP software for the purpose of creating a new system of record for that data or metadata. The SAP Platform Advanced User also includes the rights granted under the SAP Platform Standard User and SAP Platform Extended User.

SAP Platform Extended User is a Named User who is authorized to Use licensed Software solely through, and to the extent enabled by, one or more applications that (i) have been certified by SAP's Integration and Certification Center as a platform user compliant solution ("PULCS") for SAP Platform Extended Users (a list of then current PULCS applications certified for SAP Platform Extended Users can be found at "https://ecohub.sdn.sap.com/irh/ecohub/pul_compliant" (including any successor site(s) as made known by SAP from time to time, the "PULCS Site")) and (ii) Ordering Activity has first secured all appropriate rights to use such PULCS application(s) from the applicable licensor(s) (i.e. no Software and/or third party software licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s)), shall be considered a PULCS application for purposes of this Named User type, even if such applications are reflected on the PULCS Site).

SAP Platform Standard User is a Named User who is authorized to Use licensed Software solely through, and to the extent enabled by, one or more applications that (i) have been certified by SAP's Integration and Certification Center as a platform user compliant solution ("PULCS") for SAP Platform Standard Users (a list of then current PULCS applications certified for SAP Platform Standard Users can be found at "https://ecohub.sdn.sap.com/irh/ecohub/pul_compliant" (including any successor site(s) as made known by SAP from time to time, the "PULCS Site")) and (ii) Ordering Activity has first secured all appropriate rights to use such PULCS application(s) from the applicable licensor(s) (i.e. no Software and/or third party software licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP

AG or its distributor(s), shall be considered a PULCS application for purposes of this Named User type, even if such application(s) are reflected on the PULCS Site).

SAP NetWeaver Developer User is a Named User who is authorized (only where the SAP NetWeaver Foundation for Third Party Applications Software is licensed) to access the development tools provided with such Software for the purpose of developing and modifying applications (i) that are not licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s) and (ii) for which Ordering Activity has first secured all appropriate rights from any applicable licensor(s). The SAP NetWeaver Developer User also includes the rights granted under the SAP NetWeaver Administration User.

SAP NetWeaver Administrator User is a Named User who is authorized (only where the SAP NetWeaver Foundation for Third Party Applications Software is licensed) to access the development tools provided with such Software for the purpose of administering and managing applications (i) that are not licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s) and (ii) for which Ordering Activity has first secured all appropriate rights from any applicable licensor(s).

SAP Business Suite/ individual SAP solution Developer User is a Named User authorized to access the development tools provided with the licensed Software for the purpose of making Modifications and/or Add-ons to the licensed Software and also includes the rights granted under the SAP NetWeaver Developer User and SAP Business Suite Employee User.

SAP Business Suite / individual SAP solution Business Expert User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and also includes the rights granted under the SAP Business Suite Professional User

SAP Business Suite / individual SAP solution Professional User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Business Suite/ individual SAP solution Limited Professional User.

SAP Business Suite / individual SAP solution Limited Professional User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Business Suite Business Information User. The license agreement has to define in detail the limited use rights being performed by such Limited Professional User.

SAP Business Suite / individual SAP solution Business Information User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, and reports created through Use of the licensed Software by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals. Each SAP Business Suite Business Information User also includes the rights granted under the SAP Business Suite Employee User.

SAP Business Suite / individual SAP solution Employee User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) travel planning / expense reporting self-services, (iii) perform desktop procurement self-services, and (iv) room reservation self-services. Each SAP Business Suite Employee User also includes the rights granted under the SAP E-Recruiting User, SAP Learning User and the SAP Business Suite ESS User

SAP Business Suite / individual SAP solution Employee Self-Service User is a Named User authorized to perform the HR self-services role of employee time and attendance entry supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals. Each SAP Business Suite ESS User also includes the rights granted under the SAP Business Suite Employee Self-Service Core User and the SAP Human Capital Performance Management User.

SAP Business Suite / individual SAP solution Employee Self-Service Core User is a Named User authorized to perform the following HR self-services roles supported by the licensed Legacy SBOP (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) employee records maintenance, (ii) employee directory, and (iii) benefits and payment services. Further, an ESS Core User is also authorized to access "Non-SAP Content" that resides on Ordering Activity's "SAP Portal", so long as accessing such Non-SAP Content does not require or result in any Use of the licensed Software (beyond access to such Non-SAP Content as it resides on Ordering Activity's SAP Portal). As used in this ESS Core User definition, (i) "Non-SAP Content" means information created through no Use of the licensed Software and (ii) "SAP Portal" means any portal created by Ordering Activity Using SAP Enterprise Portal Software (as provided with the licensed SAP NetWeaver Software) which provides appropriately licensed Named Users a common access point by which to Use licensed SAP Software.

SAP Business Suite Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite B2B Sales User is a Named User who is an employee of Business Partners who is solely authorized to perform one or more of the following order management related roles supported by the licensed Software: (i) check product availability, (ii) configure an order, (iii) place an order, (iv) check order status, and (v) order management activities related to items (i) – (iv).

SAP ERP Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Business Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Legacy SBOP, and reports created through Use of the licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as an SAP Application Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as an SAP Application Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, and reports created through Use of the licensed Software by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as a SAP Business Suite Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as a SAP Business Suite Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Business Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Legacy SBOP, and reports created through Use of the licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as an SAP ERP Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform desktop procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as an SAP ERP Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

Metrics Mainly Used with Enterprise Extensions

Enterprise Foundation Package comprises SAP ERP and five (5) SAP Application Professional Users.

Orders per Year are defined as the total number of externally created sales and service or purchase orders processed per year. Externally created orders are those orders that are not entered by a SAP Named User.

Master Records represent one contractual relationship between the company and an employee whose payroll is being calculated.

Positions are defined as the positions within an organization, business unit, geographic location, etc. that will potentially be recruited using SAP E-Recruiting. Note that this is not the same as the number of vacancies in any given year. Each position equates to one and only one employee, regardless of whether the position is defined as part-time or full-time. For example, assume a company has 10,000 positions and 4,000 are white collar and 6,000 blue collar. They use SAP E-Recruiting to fill the white collar positions, but some other solution (or paper) to fill the blue collar positions. The SAP E-Recruiting engine price would be based on $4,000/500 = 8$ blocks.

Learner is defined as any individual accessing the application and engaging in any learning services being processed by the application.

Active Customers / Vendors are defined as active business partner master records with financial transactional data within the last 2 years. Business Partner refers to active business partners (including but not limited to customers, vendors master, subsidiaries or headquarters).

Revenue is defined as the annual income that a company receives from its normal business activities and other revenue from interest, dividends, royalties or other sources.

For SAP Account & Trade Promotion Management and SAP Trade Promotion Optimization only the revenue needs to be considered which is associated with the business or division which the capabilities of this package will be applied against.

Operating Budget is defined as total annual public sector budget of SAP customer (i.e. agency, institution, program or department)

Program Budget is defined as the budget for applying the defense organization resources (organic or contracted) to deliver the requisite capability defined by the program delivery mandate and managed in the licensed Software.

Assets under Management are defined as the total assets disclosed in the balance sheet, insofar processed by the SAP Software.

User is defined as the individual directly or indirectly accessing the Software.

For SAP Real Estate Management: User is defined as the individual who manages office, retail and industrial property and similar portfolios. It is applied for both, owned and operated space, and includes commercial as well as corporate real estate management.

For SAP Oil & Gas secondary Distribution: User is defined as the individual accessing one or more SAP Oil & Gas Secondary Distribution transaction codes.

Rental Units are defined as all rental objects that are managed with SAP Real Estate Management.

Parcels of Land are defined as units of land managed by the Software.

Employees are defined as total number of employees (including contract workers) employed by the Ordering Activity.

Commission Recipients are persons who receive payments of any type via SAP Incentive and Commissions Management.

WCM Plant is defined as a physical plant or a network location.

Service Transactions are defined as the total sum per annum of tickets/cases, complaints, incidents, service contracts, warranty claims and service orders per business support functional domain.

Financial Objects are defined as the number of financial objects (sum of Group Account, Operational Account, Cost Element, company, profit center, cost center) stored in the Master Data Governance system.

Hedge Volume refers to the volume of financial assets and/or liabilities for which Hedge accounting of interest rate risk shall be implemented. The larger the volume managed the more Hedge functions will be needed.

Business Partner Objects (MDG) are defined as the numbers of all business partner type objects stored in the Master Data Governance system. This is the sum of all supplier objects, as well as any user defined object of type business partner (Vendor, B2B Customer, B2B Contact, Employee, Business Partner, etc.) A user defined object is created using the Master Data Governance framework. A Business Partner is a natural person within an organization, a group of persons within an organization, or an organization itself that has any kind of a business relationship with a company.

Product and Other Data Objects (MDG) are defined as the numbers of all master data objects stored in the Master Data Governance system that are not of type Financials, or Business Partner. This is the sum of all material objects, as well as any user defined object of type things (Product, Article, Contract, Location, Asset, etc). A user defined object is created using the Master Data Governance framework.

Metrics Mainly Used with Line of Business and Industry Portfolios

Accounts are defined as accounts (checking, savings and trading accounts) or transactions (securities transactions (spot + forward deals) and MM / FX transactions). Accounts in the context of the SAP Capital Yield Tax Management are defined as the number of accounts (e.g. checking, savings and trading accounts) that use the CYT component to calculate taxes or identify tax exemptions.

Active Contracts are defined as an agreement between a utility company and a business partner to provide electricity, gas, water, sewage services or waste / cleaning services to the business partner. Thereby a separate contract has to be set up for each service provided (e. g. a utility company provides a business partner with electricity, water and cleaning services, thus three separate contracts have to be set-up). A contract is active if the contract ending date is later or equal to the system date.

Active Partner Organizations are defined as the number of active partner organizations with which a brand owner is doing business.

Active Registered License Plates are defined as registered vehicle License Plates that received an invoice during the last 12 months.

Ad sales value is defined as the total estimated value of all advertising sales generated in SAP Advertising Sales for Media per year.

Annual Public Sector Budget is defined as the total annual public sector budget of an SAP customer (i.e. agency, institution, program or department).

Annual Revenue and Expenses (for SAP Billing for Telecom or SAP Charging and Billing for High Tech) are defined as the Annual Revenue received and Annual Expenses paid (commissions, royalties, revenue share, etc.) based on pricing and sales events processed through the SAP Billing for Telecom or SAP Charging and Billing for High Tech. Revenue and Expenses are both positive values so that expenses do not net against revenue.

Annual Revenue and Expenses (for SAP Charging and Billing for Banking) are defined as the Annual Revenue received and Annual Expenses paid (commissions, royalties, revenue share, etc.) based on pricing and transactions that are actually processed by SAP Service to Cash for Banking e.g. annual revenue and expenses (commissions, royalties, revenue share etc.). Revenue and Expenses are both positive values for this purpose i.e. Expenses are not netted against Revenue numbers.

Average Processed Transactions/Trips/ per day (over 12 months) is defined as the number of transactions/Trips/Event Detail Records/Billing Items per day passed either into Convergent Invoicing or to Event Detail Records Billing. The number of transactions per day is measured as the average number of transactions over the last 12 months.

Backorder is defined as the average number of backorder tasks processed in the backorder cockpit per calendar year.

Banking Commission Recipient is defined as a person who receives payments of any type via ICM related to a bank's business (existing commission contract).

Bank Cards are defined as the number of cards accounts (Credit Cards, Check cards) that will be priced using the Price Optimization solution on an annualized basis

Base & Remote Locations A base location is a central warehouse or distribution center from which the remote locations are supplied with spare parts and materials. Offshore facilities (e.g. platforms) or remote on-shore facilities are examples for remote locations in the Oil & Gas industry. Mines or processing centers are examples for remote locations in the Mining industry.

Big Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the value of the leased asset (financed amount), 5 different ticket sizes are defined for SAP Leasing. Big tickets are e.g. machines for energy management, high-value cars, custom specific machinery, printing machines, home automation (asset value of 100.001 € - 500.000 €).

BOEPD Produced: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced only the produced hydrocarbons are applicable. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD produced in USA: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example,

while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced in USA only the hydrocarbons produced in USA are applicable. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD produced outside US: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced outside US only the hydrocarbons produced globally except the USA. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD scheduled/planned: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD scheduled/planned only the scheduled/planned hydrocarbons are applicable.

BOEPD sold: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD sold only the sold hydrocarbons are applicable.

Conversion rules: Metric Definitions listed above are based on the metric BOEPD (Barrel of Oil Equivalent per Day). A customer might want to use the packages for different oil products (e.g. crude oil, refined products like gasoline, natural gas, or Liquefied petroleum products - LPG) and/or measures in other unit-of-measures (UoM) than barrels. In order to enable the conversion of those products and UoMs into BOEPD, the following conversion table can be used.

Conversion Factors:

To Convert					
Crude Oil*	tonnes (metric)	kilolitres	barrels	US gallons	tonnes/ year
From	Multiply by				
Tonnes (metric)	1	1.165	7.33	307.86	-
Kilolitres	0.8581	1	6.2898	264.17	-
Barrels	0.1364	0.159	1	42	-
US Gallons	0.00325	0.0038	0.0238	1	-
Barrels/day	-	-	-	-	49.8

*Based on worldwide average gravity.

From				
Products	barrels to tonnes	tonnes to barrels	kilolitres to tonnes	tonnes to kilolitres
	Multiply by			
LPG	0.086	11.6	0.542	1.844
Gasoline	0.118	8.5	0.740	1.351
Kerosene	0.128	7.8	0.806	1.240
Gas oil / diesel	0.133	7.5	0.839	1.192
Fuel oil	0.149	6.7	0.939	1.065

To Convert						
Natural Gas & LNG	billion cubic meters NG	billion cubic feet NG	million tonnes oil equivalent	million tonnes LNG	trillion British thermal units	million barrels oil equivalent

From	Multiply by					
1 billion cubic meters NG	1	35.3	0.90	0.73	36	6.29
1 billion cubic feet NG	0.028	1	0.026	0.021	1.03	0.18
1 million tonnes oil equivalent	1.111	39.2	1	0.805	40.4	7.33
1 million tonnes LNG	1.38	48.7	1.23	1	52.0	8.68
1 trillion British thermal units	0.028	0.98	0.025	0.02	1	0.17
1 million barrels oil equivalent	0.16	5.61	0.14	0.12	5.8	1

Units of Measure

1 metric tonne = 2204.62 lb. = 1.1023 short tonnes

1 kilolitre = 6.2898 barrels

1 kilolitre = 1 cubic meter

1 kilocalorie (kcal) = 4.187 kJ = 3.968 Btu

1 kilojoules (kJ) = 0.239 kcal = 0.948 Btu

1 British thermal unit (Btu) = 0.252 kcal = 1.055 kJ

1 kilowatt-hour (kWh) = 860 kcal = 3600 kJ = 3412 Btu

OGSD User: A SAP Oil & Gas Secondary Distribution user is a user working with one or more SAP OGSD transaction codes.

Business Partner

Business Partners for SAP In-House Cash are defined as active business partner master records with financial transactional data within the last 2 years. Active business partners are the relevant subsidiaries, headquarters and external banks. External banks are defined as banks to be used for cash transfer between the In-House Cash Center (Headquarter) and the external bank.

Business Partners for SAP Bank Communication Management are defined as active business partner master records with financial transactional data within the last 2 years. Active business partners are the relevant customers and vendors with financial transactional data within the last 2 years.

Business Partner for SAP Constituent Services for Public Sector is defined as a constituent or a grant applicant.

Business Partner for SAP Payment Processing for Public Sector and SAP Receivables and Payables Management for Public Sector is defined as a constituent, organization or company.

Business Partner for SAP Tax and Revenue Management for Public Sector is defined as a constituent, a taxpayer, a tax agent / tax accountant. Citizens accessing the above packages for a strongly restricted set of tasks (i.e. viewing of documents, change of address, paying of bills and confirmations of delivery and e-filing) do not require a user license.

Cash Control Points are defined as the number of cash control points like bank offices (branches), ATMs, central vaults and central bank vaults modeled and used for planning the currency network demand and supply in APO (Advanced Planning and Optimization).

Claims Cases are defined as the number of new claims created in Claims Management during a one year period.

Classified ads are defined as the number of advertisement versions designed with the SAP ad editor in a one year period.

Commodities Sold is defined as the number of commodities sold (e.g. Copper Concentrate, Molybdenum, Iron Ore, Gold, Coal, Lead) as modeled in SAP ERP.

Consumer Loans is defined as the number of Consumer Loans (Auto Loans that will be priced using the Price Optimization tool, on an annualized basis.

Contract Account for SAP Customer Financial Management for Utilities and SAP Customer Financial Management for Wholesale Utilities is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreements apply.

Contract Account for SAP Customer Financials Management for Telecommunications and SAP Convergent Invoicing for Telecommunications is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreements apply. Pricing is based on maximum number of Contract accounts in master file.

Contract Account for SAP Bill-to-Cash Management for Postal and SAP Bill-to-Cash Management for Postal, option for convergent invoicing: A contract account in this context is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreement applies. Pricing is based on the maximum number of contract accounts in the master file. Contract accounts are customer sub-ledgers to accumulate open items and payments. Per customer various accounts may be used.

Corporate Accounts are defined as the number of Corporate Accounts. Corporate Accounts are high value and highly individualized deposits and payment products for the corporate market, often part of hierarchical account structures / groups. Pricing typically on basis of account group not based on single accounts (e.g. cash pooling). Corporate Accounts can be included in a master contract and in this case can be managed by a SAP for Banking application or via an external system.

Corporate Customers are defined as the number of Customer Files, which is the number of business partners (customers, prospects, contacts, etc.); distinguished between Retail Customers, Corporate Customers and Bank Employees (in case of Employee Help Desk); all business partners related to/relevant for the planned usage of the solution (specific department/branch, customer group, etc.) need to be counted. In case of Employee Help Desk (using SAP Solution Manager) this metric needs to be applied for the help desk staff. For employees only reporting problems an Employee User will be charged.

Corporate Loans are defined as highly individualized loans products for the corporate market with a high value.

Customer is defined as the number of active partner records in data base.

Customers Marketed to is calculated as: The number of unique customers who have been part of any active (released) campaign in a given calendar year PLUS the number of unique, active members in loyalty programs in a calendar year.

A member is considered active as long as the status of their membership record is "active" in the SAP CRM system, regardless of the number of activities recorded by them.

Dead Weight Tons (DWT) are defined as the amount of weight a ship is carrying or can safely carry. For other modes of transportation, a DWT corresponds to a Ton.

Deposits are defined as the number of deposits accounts (Saving, Money Market, Checking, CDs etc) that will be priced using the price Optimization solution on an annualized basis.

Derivatives are defined as a financial instrument whose value is based on another security.

Device is defined as a Point of Sales Device, or Mobile Device for Mobile POS application.

Employees Scheduled is defined as the maximum number of employees that need to be considered during a scheduling run.

Equipment Items are defined as equipment master records. Each equipment master record which is assigned to Equipment and Tools Management (ETM) is counted for pricing. An equipment master record can be configured as a single item (e.g. a crane), or as a "multi-part equipment" (which could have, e.g., 100 drilling machines in inventory), in both cases only one equipment master record is counted for pricing.

Events are defined as the maximum number of event data records that are processed and stored in database over a one year period.

Finished Items are defined as the total number of additional finished items created or maintained per year by the customer. A finished item represents vehicles and major assemblies, like engines, axles, and transmissions. Warranty claims, which are created by Dealer Business Management DBM service orders, sent or received out of the SAP DBM system and which are not further processed, are covered. In case of extended use of warranty functionalities this exception is not applicable. Pricing of warranty claims (service requests) will follow the pricing of "SAP Aftersales Support for Automotive".

Finished Products are defined as the number of finished items planned in the rapid planning matrix, sequencing table and / or model mix planning.

Full-time Equivalent (FTE) is defined as both employees who are employed by the licensed organization and non-employees who may be engaged on emergency related activities, either on a temporary or permanent basis and who are tasked, deployed or managed by the licensed organization for the purposes of disaster or emergency management.

Full Time Registered Students or Equivalents is defined as:

- Number of Full-time Students: i.e. Student who are registered for a full course load for the current academic year at the institution.
- Number of Equivalents of Full-time Registered Students (for example, a Part Time student could represent a fraction of a Full Time student).

Fundable Assets are defined as Funding Workplace, Mortgage & Leasing.

Funded Assets are defined as all contracts (leasing, loans etc) managed by SAP Funding Management which are currently refinanced. In this context, the effective amount is the sum of all refinancing transactions in status "fixed" or "funded".

Gross written premium (GWP) of an insurance company is defined as the total gross premiums of a fiscal year, insofar processed by the SAP solution.

Gigawatt (GW) is defined as the measurement of installed capacity. Installed capacity is the maximum production capacity of a plant based on the rated capacity. For a power plant both the electrical power as well the thermal power has to be considered. The installed capacity of a power plant is measured in Watt and commonly used as Megawatt (MW) or Gigawatt (GW).

Home Equity Products are defined as the number of home equity loans and lines (such as HELOC, HEL, and FRLO) that will be priced using the price Optimization solution on an annualized basis.

High Value Loans: Number of High Value Loans. High value loans normally have a complex structure and a high level of individualization on customer level in the area of corporate banking. They are possibly included in refinancing via syndications.

Interaction Records are defined as the total number of interaction records created per year by the SAP CRM interaction center.

Joint Venture is defined as a contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise. The maximum number of Joint Ventures per year needs to be considered.

License Revenue is defined as the annual value that a company creates from intellectual property license monetization that is handled within the SAP IPM system. License Revenue includes financial validation for deals which is implemented in SAP IPM but does not result in an incoming payment e.g. barter deal.

Limit Sets are defined as the number of current Limit sets that are used in the system.

Loans Volume in Balance Sheet: Loans Volume in Balance Sheet.

Logistic Locations are defined as plants, distribution centers, customers and suppliers/vendors modeled in SAP APO (Advanced Planning and Optimization) where products or resources are planned.

Location w. Customer Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Customer Collaboration. This includes all contract manufacturer owned and managed locations as well as all customer side locations that e.g. receive goods, or locations that are otherwise necessary to define in the system when running the Customer Collaboration scenarios.

Location w. Outsourced Manufacturing scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Outsourced Manufacturing. This includes all contract manufacturer owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Outsourced Manufacturing scenarios.

Location w. Quality Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Quality Collaboration. This includes all supplier owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Quality Collaboration scenarios.

Location w. Supplier Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Supplier Collaboration. This includes all supplier owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Supplier Collaboration scenarios.

Location w. Lean Manufacturing scenario is defined as all partner locations (both customer locations and supplier locations) in the master file of the SNC solution (ICH), as well as all connected JIT/JIS-partners (Just-in-time/Just-in-sequence) in the table JITCU. Each licensed partner location additionally contains 50.000 in-bound JIT/JIS calls per year. In this case the connected Partner locations / partners are counted per plant of the customer to calculate the license fee (e.g. 2 supplier plants of one company shipping to one customer plant is to be counted as 2 partner locations).

Maintenance Object is defined as all objects defined in the MSP (Maintenance and Service Planning) master file (major assemblies such as aircraft, engine).

Marketing Transactions are defined as the number of active campaigns defined within the SAP CRM system plus the number of active Market Development Funds (MDF) program memberships per year. An active MDF program membership is one in which a partner has submitted at least one MDF initiative request in that year.

Medium Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Medium tickets are e.g. trucks, big cars, construction equipment and forklifts (asset value of 50.001 € - 100.000 €)..

Mortgages are defined as the number of mortgage accounts that will be priced using the Price Optimization solution on an annualized basis.

Micro Loans are defined as highly standardized, low value loans, given by a bank or other institution in emerging countries. Micro loans can be offered, often without collateral, to an individual or through group lending.

Micro Saving Accounts are defined as highly standardized deposit services that allow people to store small amounts of money for future use, often without minimum balance requirements. It cannot be a fixed deposit account.

Number of Cases per year are defined as the related information around a specific event that is processed by a case manager. As a related concept a case would be the information maintained in a physical file folder that is now maintained as a record in the SAP system.

Number of Loyalty Members in the SAP CRM system is defined as the actual 12 months average number.

Number of Partner Organizations is defined as the number of partner organizations maintained in the SAP CRM system.

Number of Records is defined as the actual 12 months average number of business partners and marketing prospects maintained in the SAP CRM System.

Number of Sales Employees are defined as the total number of employees (including contract workers) and business partners using the SAP CRM Sales software.

Objects are defined as contracts for financial products that are sold in the retail market and in OTC (over-the-counter) trading (examples: loans, credit facilities), and standardized products that can be bought and sold in an open market (stock exchange) (e.g. Shares, Listed Options, Bonds).

Outpatient Days in Year: One Outpatient Days is counted when one patient has been treated as an outpatient in one calendar day, independently of the quantity of work done on that day and on how the work was documented in the SAP system (in one or more treatment cases, and within cases as one or more visit movements).

Page Views (per year) are defined as the number of times a web page has been successfully served to a user's browser (in 12 month) as recorded by the log files of the web server. Only web pages, served to the SAP server count towards this metric.

P/C/S Cashflow Based: Cash flow based loans except retail loans are defined as:

1. Private Banking / Complex Individual / SME Banking / Mortgages include products with a certain level of personalization on customer level for individuals and small/medium enterprises.
2. Corporate loans are highly individualized loans products for the corporate market and can also have a complex structure.
3. Securities positions

Participant is defined as a member of an Access Control Context, or a user utilizing Business Context Viewer.

Patients treated in Year: Number of patients treated in one calendar year in the institutions supported by the SAP system. Patients are only counted once, no matter how many times they are treated in the hospital within the year.

Persons in treated Population is defined as the number of persons belonging to the population that is treated in the healthcare network to which the Software is applied.

Physical Locations are defined as all mines, concentrators, processing plants, smelters, refineries, distribution centers (stock piles), and ports.

PoD (Point of Delivery) with an advanced active meter assigned. A Point of Delivery (PoD) is the point to which a utility service or other service is supplied. A meter is advanced if it supports bidirectional communication (also known as "smart meter"); a meter is active if the status in the system has been set to "active" (usually done after the meter has been installed to show the meter is ready); a meter is "assigned" to a PoD if it has been built into an installation and this installation has been assigned to the PoD.

Production Tons: Production Tons is defined as the production volume over the period of a year.

Small Plant: is defined as a plant with up to 500 employees: A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

SAP Product Structure Synchronization: Every outsourced manufacturing plant will be considered as small plant. An outsourced manufacturing plant is a physical site owned or operated by a supplier or partner who is part of the engineering to manufacturing scenario supported by Product Structure Synchronization.

Midsize Plant is defined as a plant with 501 up to 5,000 employees. A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

Large Plant is defined as a plant with more than 5,000 employees. A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

For SAP Operations Management for Mining: Plants are mines, concentrators, processing plants, smelters, refineries, distribution centers (stockpiles) and ports. Employees include own employees in the operations, contractors, administration and maintenance staff.

PoDs: PoD (Point of Delivery) is the point to which a utility service or other service is supplied.

Portfolio Budget managed with SAP Business Planning for T&L or SAP New Product Development and Introduction for CP is defined as the total annual (calendar or fiscal year) budget of combined "active" portfolio items contained in SAP Business Planning for T&L or SAP New Product Development and Introduction for CP.

Point of Sales (POS) is defined as a physical store or shop-in-shop. Pricing is based on the total number of POS entries in the master file.

POS Transactions: Annual number of sales orders based on one-order documents which are triggered by the SAP CRM system and PoS (Point-of-Sale) transaction line items which are executed in the SAP CRM system.

Private Banking / SME Accounts: Private Banking /SME Accounts are defined as the number of Private Banking / SME Accounts. Deposits account products with a certain level of individualization on customer. Private Banking / SME Accounts can be included in a master contract and in this case can be managed by a SAP for Banking application or via an external system.

Private Banking, Complex Individual, SME Loans: Number of Private, Complex Individual or SME Loans. This business type covers the management of products with a certain level of personalization on customer level for individuals and small/medium enterprises. The product spectrum covers the same type of product as retail banking, but having a higher complexity, higher level of individualization and value.

Public Sector Spend Budget: Annual public sector spend budget as published records of budget year procurement obligations.

R&D Spend Volume: Annual expenditure of company or relevant business units on R&D activities from financial statements, including headcount, equipment and related projects.

Retail Accounts: Number of Retail Accounts. Retail Accounts are standardized deposits products with simple structures and small value for the mass market. Internal accounts are also to be classified as retail accounts. Retail Accounts can be included in a master contract.

Retail Cashflow: Cash flow based retail loans are defined as standardized cash flow based loan products for the mass market segment of individuals. The product spectrum covers loans with simple structures and small values for financing consumer products, auto/cars and voyages.

Retail Customers: Number of Customer Files = number of business partners (customers, prospects, contacts, etc.); distinguished between Retail Customers, Corporate Customers and Bank Employees (in case of Employee Help Desk); all business partners related to/relevant for the planned usage of the solution (specific department/branch, customer group, etc.) need to be counted.

In case of Employee Help Desk (using SAP Solution Manager) this metric needs to be applied for the help desk staff. For employees only reporting problems an Employee User must be licensed.

Retail Loans: Number of Retail Loans. Retail loans are standardized loan products for the mass market segment of individuals. The product spectrum normally covers loans with simple structures and small values.

Rights Spend: is defined as the total amount of a company's annual expenditure for the acquisition of intellectual property rights. Rights Spend includes financial validation of deals which are implemented in SAP IPM but do not result in outgoing spent e.g. barter deals.

Sales Employees using SAP sales are defined as the total number of employees (including contract workers) and business partners using the SAP CRM Sales Software.

Sales Orders are defined as the annual number of sales orders based on order documents which are executed in and triggered from SAP CRM.

Sales Value is defined as the total estimated sales value generated in SAP Product Sales and Distribution for Media per year.

Secured Corporate Receivables are defined as highly individualized receivables (loan, credit facility ...) product for the corporate market, managed either by a SAP for Banking application or in an external system, secured by one or more collateral objects.

Secured Micro Loans are defined as a small amount of money loaned to a client by a bank or other institution, offered with a collateral, to an individual or through group lending.

Secured Private Banking, Complex Individual, SME Receivables are defined as receivables (loan, credit, facility) with a high level of individualization on customer level, managed either by a SAP for Banking application or in an external system, secured by one or more collateral objects.

Secured Retail Receivables are defined as standardized receivables (loan, credit, facility, etc.) product for the mass market, managed either by a SAP for Banking application or in an external system, secured by a collateral object.

Service Inquiries are defined as the annual number of service related inquiries; including service process types: complaints, service orders, service incidents, service requests, repair order request for changes, warranty claims & problems.

Service Parts Inventory is defined as the current value of service parts stock inventory at the balance sheet key date, in accordance with the ruling accounting principles.

Service Requests and Warranty Claims are defined as the number of service related inquiries per year, including service process types: complaints, service orders, service incidents, service requests, repair order request for changes, warranty claims & problems plus the number of warranty claims (processed within ERP).

Shipment is defined as a physical shipment of cargo from origin to destination. Shipments are consolidated shipments as represented in the software in a one year period.

Logistic Service Providers: Shipments are consolidated shipments (orders/bookings/jobs or item lines) as represented in the system in a one year period. The industry terms "bill of lading" (road, air or sea) also refers to a shipment within the SAP system.

Mill Products: Shipments are consolidated shipments as represented in the system in a one year period. In the mill products industry, shipments correspond to deliveries, shipments, containers, trucks or railcars.

Consumer Products: Shipments are consolidated shipments as represented in the system in a one year period. In the consumer products industry, shipments correspond to deliveries, orders or loads (=vehicles).

Postal: Shipments are consolidated shipments as represented in the system in a one year period. Deliveries are always considered as freight units. Additional to the deliveries, also containers, handling units, orders, vehicles or packets can be freight units.

Small Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Small tickets are e.g. small cars, medical devices, IT equipment (asset value of 5.001 € - 50.000 €).

Spare Parts Material Master Records are defined as the current value of service parts stock inventory at the balance sheet key date, in accordance with the ruling accounting principles.

Spend Volume is defined as the total amount of a company's annual expenditure for the procurement of all direct and indirect goods and services.

When licensing SAP BusinessObjects Electronic Invoicing for Brazil (NFE-Inbound), only Spend Volume in Brazil is to be considered.

Subscriptions are defined as an agreement between the customer and the provider for the access to or use of a service provided under certain terms and conditions. One customer or subscriber could have one or many different subscriptions for different or similar services.

In a bundle, every included main service subscription counts as 1 subscription (e.g. in a Triple Play bundle with Mobile, Internet Broadband and IPTV services, 3 subscriptions would be charged)

Syndicated Loans: Syndicated Loans on a wholesale basis, i.e. big tickets (e.g. for infrastructure projects).

Telecom Orders are defined as the total annual number of telecom orders and subscriptions (for individual service products or bundles), change processes (e.g. tariff or subscription changes) and cancellations.

Titles are defined as the Number of titles actively managed during the last three years period, as reported by the publisher.

Tonnage Produced: maximum tonnage produced on one day.

Trips/vehicle related services (per day) are defined as the total number of transactions per day processed by the convergent charging system, which are defined as pricing outputs (where one input as Event Detail Record/Billable item can generate one or several pricing outputs). In case several parties participate to the Trip/vehicle related service, the additional transactions triggered by the SAP Convergent Charging engine for settlement purposes need to be counted in addition to the original transactions.

Transaction per Day: Transactions per day are defined as the total number of transactions per day processed by the convergent charging system, which are defined as pricing outputs (where one input can generate one or several pricing outputs)

The amount of Transactions per Day licensed must be sufficiently large to accommodate for peak load days, i.e. on any given day of the year the actual Transactions per Day volume of pricing outputs must be less than or equal to the licensed Transactions per Day volume.

Prepaid Telecommunications: Pricing or charging outputs for accounts that have paid or were paid in advance for the services consumed.

Postpaid Telecommunications: Pricing or charging outputs for accounts that will pay or be paid for the services consumed after invoice or payment statement generation.

Travel Claims are defined as any Trip or Expense Report that is entered into SAP TM and submitted for claim.

Vehicles: Number of finished items ordered in one year. Finished items are vehicles and major assemblies like engines, axles, and transmissions.

Very Big Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Very big tickets are e.g. ships, power stations, oil platforms, aircrafts, complex IT projects (asset value of > 500.000 €)..

Very Small Tickets: Very small Tickets are defined as the number of objects (assets or services without asset) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Very small tickets are e.g. PC, laptops, copy machines, printers (asset value of 0 € - 5.000 €).

Weighted Size of Organization in FTE: The weighted size of the organization reflects the number of Full Time Equivalents (FTEs) employed in the organization – including military and civilian personnel & reserve.

Warehouse is defined as a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products).

Small Warehouse is defined as a Warehouse with up to 5.000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Midsize Warehouse is defined as a Warehouse with 5.001 up to 35.000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Large Warehouse is defined as a Warehouse with more than 35.000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining

the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Web Channel User is defined as employees of external Business Partners who are solely authorized to perform Business to Business sales and/or service management and/or user maintenance activities supported by the web channel software.

Metrics Mainly Used with SAP NetWeaver

CPU: Every CPU that runs at least parts of the licensed software is considered in its entirety.

When counting physical CPUs, each core of a physical CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted.

When counting virtual CPUs, each core of a virtual CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. If the software will run in a pure virtual environment, physical CPUs will not be considered.

CPU metric value calculation: For each CPU, the first processor core shall be multiplied by 1, and each incremental processor core is multiplied by 0.5. The sum for all CPUs shall then be rounded up to the next whole number.

Adapter Type: Backend Applications Adapters need to be licensed per adapter usage type (i.e connectivity to Oracle, Siebel, etc.) irrespective of the number of installations or connected systems; no matter whether the adapter is used together with an SAP solution requiring SAP PI or used in a custom developed scenario.

GB per Month is the overall message volume expressed in Gigabytes (GB) per month, which is processed by the respective SAP Application.

Installation: An installation is defined as an instance of the software installed at a designated device.

Blade memory is defined as memory of the blade.

External Community Members are either non-employees of organizations such as schools, universities, charities or governmental entities or business third parties including, but not limited to, customers, employees of distributors and suppliers who are licensed to access solely the SAP Enterprise Portal software. External Community Members are not allowed to access other SAP software and their respective components. Business third party employees participating in collaborative business scenarios that require access beyond SAP Enterprise Portal software need to be licensed as Named Users for the respective SAP software.

Business Partner Objects are defined as the numbers of all business partner type objects stored in the Master Data Management system. This is the sum of all supplier objects, as well as any user defined object of type business partner (Vendor, B2B Customer, B2B Contact, Employee, Business Partner, etc.) User defined objects are created using the MDM tool for management within the MDM repository. A **Business Partner** is a natural person within an organization, a group of persons within an organization, or an organization itself that has any kind of a business relationship with a company.

Consumer Objects are defined as the total numbers of all consumer type objects stored in the Master Data Management system. This is the sum of all B2C Customer, B2C Contact, Citizen objects, plus the total number of any additional Consumer type user defined object. User defined objects are created using the MDM tool for management within the MDM repository. A consumer is a natural person or a group of persons (e.g. household) that has any kind of business relationship with a company.

Master Data Objects are defined as the total number of all master data objects stored in the SAP NetWeaver Master Data Management system, plus the total number of all master data objects stored in the SAP Master Data Governance System.

Product and Other Data Objects are defined as the numbers of all master data objects stored in the Master Data Management system that are not of type Financials, or Business Partner. This is the sum of all material objects, as well as any user defined object of type things (Product, Article, Contract, Location, Asset, etc). User defined objects are created using the MDM tool for management within the MDM repository.

Product in Data Cache: The price is based on the number of products in the Product Data Cache

Internal User Identifiers are defined as the total number of individuals working inside the Ordering Activitys organization (employee, contract worker and outsourcer), whose credentials and/or user information is managed by the functionality of the licensed Package.

External User Identifiers are defined as the total number of individuals being external to the Ordering Activitys organization (other than employee, contract worker and outsourcer), whose credentials and/or user information is managed by the functionality of the licensed Package.

Records are defined as the total number of leading SAP business objects and/or the number of cases in SAP NetWeaver Folders Management. Archived Records (records attached to archived business objects) are not counted. A leading object is the object the record refers to.

When SAP NetWeaver Folders Management is used to manage employee files, employees managed in the SAP HCM system are the leading object to be counted. When it is used for billing, creditors and debtors are the leading objects to be counted. When it is used in SAP Real Estate Management, real estate objects (including but not limited to real estate contracts, business entities, buildings, pieces of land, rental objects architectural objects, and parcels of land) are the leading objects to be counted. When it is used to manage changes of equipment by utilizing cases, the number of change requests is counted.

Port is defined as a communication channel.

Recipients are defined as the number of individuals receiving reports from the licensed software.

Decommissioned Systems are defined as the number of systems that are retired using SAP NetWeaver Information Lifecycle Management.

Service Calls are defined as the total number of HTTP request per calendar year which are processed by SAP NetWeaver Gateway Server. Metadata requests and requests from SAP Software that contains SAP NetWeaver Gateway runtime software are not counted.

LVM Instances are defined as the primary application server used for central application services of the managed SAP application, including the enqueue and message services (e.g. the central instance), any SAP Web AS instances associated with the managed SAP application that is not the central instance (e.g. dialog instances), the primary database of the managed SAP application (e.g. database instance), or any occurrences of TREX or LiveCache associated with the managed SAP application.

For the copy/clone/refresh option, only the primary system database of the source systems are counted. In cases where multiple databases are configured for the managed systems (e.g. shadow DB, DB cluster, LiveCache, etc.), then only one database is counted, regardless of which ones or how many are configured.

For third-party (e.g. non-SAP applications) and custom developed applications the entire application is defined as a single LVM instance in SAP NetWeaver Landscape Virtualization Management, regardless of the software architecture for that application.

Metrics Mainly Used with SAP HANA

Gigabytes of Memory are defined as the total amount of memory that may be used by the HANA Software, as measured in gigabytes. Each unit of HANA licensed contains 64 Gigabyte memory.

Metrics Mainly Used with General Supplementary Products

Customer Interactions are defined as the number of agent-assisted or self-service customer interactions with one or more recommendations made by the RTOM engine per annum. RTOM recommendations might be cross-sell, up-sell or next best action recommendation.

Installations for Enterprise Project Connection are defined as the number of installations to 3rd party products (e.g. the number of 3rd party project system installations that will be connected to SAP systems)

Portfolio Budget managed with SAP Portfolio and Project Management (through Resource and Portfolio Management capabilities) is defined as the total annual (calendar or fiscal year) budget of combined "active" portfolio items contained in SAP Portfolio and Project Management (through Resource and Portfolio Management capabilities).

Contracts are defined as the total number of contracts the company plans to address within the application. The total number of contracts is the number of contracts used in all functions including procurement, sales, legal, partner management, HR, real estate, and all other functions of the organization.

Work-Center is designed as a "Kanban Work-Center" or a "Pacemaker Work-Center". A Work center can be "single" resource or a "group of resources" where a single schedule is created for the line.

Auto-ID Site is defined as a physical location identified by a street address where device(s) are capturing and transmitting data, connected with Auto-ID Enterprise and/or Auto ID Infrastructure software. Multiple separate physical structures with no common walls and which have the same street address will be considered separate sites.

Database Size is defined as the database size of the productive system and is calculated individually for each system that means for each ERP, BI and CRM system.

For SAP NetWeaver Information Lifecycle Management Database Size is defined as the total database size of productive SAP system where SAP NetWeaver ILM Retention Management is run.

Resources are defined as uniquely identified users or pieces of equipment, including machines, tools and scanners that directly or indirectly feed data to or accesses data from the SAP Manufacturing Execution System.

Recommendations are defined as the total number of recommendations created by the RTOM system in a calendar year.

Employees (SAP MII) are defined as the total number of employees in those plants and supporting locations using SAP MII, and where employees are workers, mobile workers, contractors or partners associated with those plants/locations.

BCM multi-channel User is defined as the user (agent and/or supervisor) who works in a contact center environment and handles incoming contacts through multiple communication channels (voice, email and chat) and/or handles outbound campaign calls and/or uses supervisor tools to supervise contact center agents.

BCM voice-only User is defined as the user (agent) who works in a contact center environment and handles incoming contacts through voice channel only or handles outbound campaign calls only.

BCM personal-telephony User is defined as the user who uses the system for office telephony only without access to contact center capabilities.

BCM reporting User is defined as the total number of users (multi-channel user, voice-only user and personal telephony user) in the SAP Business Communications Management customer system that are collected for communication statistics.

BCM Rapid Deployment Edition User is defined as the user (agent and/or supervisor) who works in a contact center environment and handles contacts through voice channel only and views predefined communication statistics within a predefined SAP Business Communications Management Rapid Deployment customer system.

Defined Business Transactions are defined as the annual number of service related transactions; including service process types: service incidents, service requests, problems, request for changes and knowledge article.

Accumulated Database Size is defined as the database size of all productive SAP systems where the customer will use SAP Landscape Transformation.

Items per configuration is defined as the amount of line items in the CRM quotation that have been generated using the solution.

Tons per year for SAP Commodity Sales & Procurement for iron ore, steel and coal are defined as the maximum of the sales or purchasing volume for the following commodities: Iron Ore, steel, coal.

Barrels of Oil Equivalent per day ("BOEPD") for SAP Commodity Sales & Procurement for oil, oil equivalent and gas are defined as the maximum of the sales or purchasing volume for the following commodities: crude oil, natural gas, Nat Gas Liquids NGL, ethanol, gasoline, jet fuel / kerosene, heating oil.

Tons per year for SAP Commodity Sales & Procurement for base metals, cereals and sugar are defined as the maximum of the sales or purchasing volume for the following commodities: tungsten, molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium, rhenium, thallium, uranium, pulp, paper, wheat, corn, rice, sugarcane.

Tons per year for SAP Commodity Sales & Procurement for alu, grains and other major crop are defined as the maximum of the sales or purchasing volume for the following commodities: Aluminum, oats, barley, rye, potatoes, cassava, soybeans.

Tons per year for SAP Commodity Sales & Procurement for non-ferrous base metals are defined as the maximum of the sales or purchasing volume for the following commodities: copper, lead, zinc.

Tons per year for SAP Commodity Sales & Procurement for coffee, oilseeds, meat, dairy are defined as the maximum of the sales or purchasing volume for the following commodities: coffee, rapeseed, canola, sunflower seed, peanuts, oils & fats, oil meal, live cattle, feeder cattle, lean hogs, pork bellies, CME milk, butter, fruits & vegetables, cotton, jute, orange juice, apple juice concentrate, sugar, lumber, tobacco, rubber.

Tons per year for SAP Commodity Sales & Procurement for tin, nickel, cocoa and tea are defined as the maximum of the sales or purchasing volume for the following commodities: tin, nickel, cocoa, tea.

Ounces per year for SAP Commodity Sales & Procurement for silver are defined as the maximum of the sales or purchasing volume for the following commodities: Silver.

Ounces per year for SAP Commodity Sales & Procurement for precious metals except silver are defined as the maximum of the sales or purchasing volume for the following commodities: gold, platinum, palladium, ruthenium, rhodium, osmium, iridium.

Metrics Mainly Used with Third Party Supplementary Products

Process servers are defined as each server (real or virtual) where scheduled jobs are to be managed.. A process server is required for every single connected application, server or operating system (OS) instance (virtual or physical) with a unique identification on which processes are executed that need to be monitored, managed and controlled. For each process server purchased the customer is provided with 1 production and 3 non-production environments (i.e. 1 for fail-over for the production instance, 1 for development and 1 for test).

Invoice is defined as each item that flow thru the cockpit for reconciliation per year.

Users and Forms Users are defined as employees accessing Interactive Forms based on Adobe - Enable the Enterprise. Bundles of 40 forms are defined as 40 modified or created Interactive Forms being accessed.

Professional Users are defined as total number of all SAP Professional and SAP Limited Professional named users of the customer irrespectively whether they actually accessing this program or not.

Scenarios are defined as scenarios being used in SAP Process Performance Management by Software AG based on SAP Solution Maps. Details on SAP Solution Maps can be found in sap.com: <http://www.sap.com/solutions/businessmaps/index.epx>

Trucks are defined as vehicles with order management handled in the application.

Monitored users are defined as employees who will be monitored and are authorized to use the reporting consol.

Managed Resources are defined as the number of Client employees, delivery vehicles and/or any other unique resources managed by SAP Workforce Scheduling & Optimization by ClickSoftware.

A Scheduled Public Officer is defined as any employee who is involved in public administration, public security or works for a government agency and which will be planned for the work rosters and/or scheduled for service activities.

Virtual User is defined as each user that is simulated in the software to test the load on the SAP system.

Portal User is defined as the estimated number of licensed users with access to a particular deployment of the SAP Portal, including SAP Professional Users, ESS/MSS Users, and External Community Members.

Loadrunner Controller is defined as the central point for load test design and load test execution.

Loadrunner Enterprise Controller is defined as the central point for load test design and execution, and contains a component that provides for web access and scheduling capabilities.

Testers are defined as employees working with SAP Quality Center by HP products. For use with SAP Test Acceleration and Optimization tester are defined as employees using SAP TAO and testing SAP applications enterprise-wide.

Total Assets are defined as the sum of current and long-term assets owned by the bank.

Message volume (MB) / month / installation is defined as data volume in MB of conversions performed per month and per installation.

Mobile user is defined as each user accessing data from DB2 Everyplace Database.

Devices are defined as all devices accessing data from Sybase SQL Anywhere Database.

VIP User is defined as each user accessing SAP Visual Information for Plants by NRX.

SAP Application Value (SAV) is defined as the sum of list prices for Named Users, External Community Members, (pan-industry and industry specific) Software Engines and Supplementary Products, excluding those items identified in the list of prices and conditions that do not contribute to the SAP Application Value.

Contract Price is defined as the net value of the license contract. Contract Price for partners refers to Partner Buy Price depending on the support delivery model.

Service request is defined as the annual number of service related inquiries, including service process types: cases, complaints, warranty claims and service orders.

Connected System is defined as the total number of productive SAP Solution Manager systems connected to the productive systems of SAP Quality Center by HP, Central Process Scheduling by Redwood, or SAP Productivity Pak by RWD.

Total annual budget is defined as total annual public sector budget of SAP customer (i.e. agency, institution, program or department) based on current budget period.

A **resource contributing to usage volume** is defined as a resource planned during a given calendar year using SAP Multiresource Scheduling or SAP Multiresource Scheduling with Optimizer. A resource is a person (such as a technician, service engineer, or repair engineer), or a production resource (such as a tool, instrument, machine, or room).

Payment item is defined as a single Payment transaction within a payment order. A payment order can have one ordering party item and n recipient party items.

Licensed User is defined an individual user licensed as one of the Named User types defined in the price list.

Employee Files are defined as employee (employees and former employees) folders containing their electronic files.

Profile is defined as an individually produced business mapping document counted for each connected business partner. Each profile is qualified by SAP, example: purchase order inbound, purchase order confirmation outbound, purchase order confirmation inbound, purchase order change and cancellation.

Net Property Plant & Equipment is defined as value of the total property, plant and equipment as disclosed in the balance sheet insofar as processed by the SAP solution.

Cost of Goods Sold is defined as all expenses directly associated with the production of goods or services the company sells (such as material, labor, overhead, and depreciation). It does not include SG&A or R&D. If COGS is unknown then COPGS shall be equal to 70% of total company revenue.

An output transaction means a single instance of a business document that is created, processed, printed or manipulated in some way by the products (e.g. letter, email, PDF, fax, SMS).

Asset retirement obligation cost estimations is defined as the volume of the cost estimations which are handled in the solution. The cost estimation volume is equal to the total of the settlement values (expected costs at the estimated retirement date) of all cost estimation items of the cost estimation plans of all Asset Retirement Obligations, which are handled by SAP Asset Retirement Obligation Management. If the customer is using more than one accounting principle, the cost estimation volume is calculated separately for every accounting principle. The maximum of these values will be used for pricing. The cost estimation volume is determined based on the volume, which is valid at the fiscal year end date. Only asset retirement obligations, which are active at this date, will be considered.

Invoices (outbound) is defined as the number of invoices sent via e-invoicing.

Invoices (inbound) is defined as the number of invoices received via e-invoicing.

Author is defined as someone who can create/edit a visualization using SAP Application Visualization by iRise, the add-on for SRM (if applicable), and add-on for general SAP solutions (if applicable)

Database Objects is a collection of intrinsic and/or customer-defined properties that is defined by a Palantir dynamic ontology and stored in or accessible by the Palantir system.

Metrics mainly used with business intelligence (BI), enterprise information management (EIM) solutions and address directories

Named user License (NUL). Users are also known as Named User License (NUL). Each individual end user must be specifically identified as the sole holder of a NUL. The sharing of the NUL by more than one individual is expressly prohibited. In addition, NUL(s) may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the licensed Software.

There is no license limit on how many individuals are working concurrently with the Software. There is no license limit on number of processors or servers used. Named Users are identified at logon and do not consume a Concurrent Session license. Concurrent Session licenses and NULs can be purchased in combination for a Deployment, but cannot be shared among or between Deployments.

This metric does not replace the overall SAP Named User licensing requirement.

Concurrent Access License or CALs (Important note: this pricing metric is only available through BusinessObjects Value Added Resellers) refers to the aggregate number of end users accessing the licensed Software at any one time. The number of users accessing the licensing Software may not exceed the number of CALs the customer has obtained. CAL(s) are assigned to a particular Deployment, and may not be shared among different Deployments. When using Concurrent Access licenses, customer may not utilize a program or system to cache or queue report requests.

Annual Subscription is defined as a periodic recurring fee that is payable every calendar or fiscal year for the right to use software or services during that calendar or fiscal year. This fee is payable each calendar or fiscal year whether or not the software or service has been used during that year.

Concurrent Session refers to the aggregate number of sessions accessing the licensed Software at any one time. A session refers to the time between logon and logoff or time out where a unique user, application or platform accesses the licensed Software. The number of sessions accessing each licensed Software product may not exceed the Licensed Level for the number of Concurrent Sessions for such licensed Software product. All Concurrent Session licenses for a given Software product must be assigned to the same, single Deployment, and may not be assigned amongst different Deployments. When Using Software licensed by number of Concurrent Session licenses, Ordering Activity may not utilize any program or system to cache or queue report requests.

CPU. Every CPU that runs at least parts of the licensed software is considered in its entirety.

When counting physical CPUs, each core of a physical CPU that runs at least parts of the licensed Software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted.

When counting virtual CPUs, each core of a virtual CPU that runs at least parts of the licensed Software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. If the Software will run in a pure virtual environment, physical CPUs will not be considered.

CPU metric value calculation: For each CPU, the first processor core shall be multiplied by 1, and each incremental processor core is multiplied by 0.5. The sum for all CPUs shall then be rounded up to the next whole number

Data Migration Project is defined as a project with a single identified target system where data can be migrated to or from multiple source systems. The package has term limit of 18 months with an initial 6 month maintenance and option to renew maintenance one time for 12 months. Clock starts when the contract is signed.

Deployment is defined as a single installation of no more than one of the following Software modules or files within the BA&T SAP BusinessObjects Business Intelligence Platform Software (for which Ordering Activity must obtain a license): Repository, Security Domain, Central Management Server ("CMS"), CMS Cluster, or Crystal Reports Runtime Engine.

Instance is defined as a single unique connection to a specified application or technology type.

Package Fee is defined as a flat fee to license the software.

Server is defined as a physical computer, case, box or blade that houses the CPUs running the software product. Multiple virtual machines on the same physical box are allowed and do not require additional licenses.

Type License. When Software or Third Party Software is licensed by Type, the Software or Third Party Software may only be used in connection with an unlimited number of connections to a single, specified database or application.

Metrics mainly used with governance, risk, and compliance (GRC) and enterprise performance management (EPM) solutions

Country Exporting is defined as the countries where electronic communications with local customs authorities needs to be established.

When licensing by 'country exporting from': Please note that number of countries where electronic communications is available is currently limited. Please check availability before licensing for a particular country.

Employee is defined as the total number of employees (including contract workers) employed by the company or employed by the legal entity that is licensing the functionality of the package.

When licensing by Employees for EPM or GRC packages: If the licensed package will be restricted to a division, affiliate or subsidiary of the Ordering Activity, it is possible to use the total number of employees employed by such division, affiliate or subsidiary of the Ordering Activity whose activities are being managed by the licensed software.

One Time Fee is defined as a flat fee to license the software.

Monitored Users are defined as employees, contract workers or other individuals whose credentials, permissions, privileges and/or other user information will be monitored, evaluated or managed by the Software

Revenue is defined as income that a company receives from its normal business activities and other revenue from interest, dividends, royalties or other sources.

When licensing by Revenue for SAP BusinessObjects Electronic Invoicing for Brazil (NFE), the Revenue considered is limited to the revenue generated by the company or legal entity located in Brazil.

Recipients are defined as the number of individuals receiving reports from the licensed software.

Metrics mainly used with SAP BusinessObjects solutions for SME

Filing: Each Filing permits one Legal Entity to Use the Software to submit an unlimited number of applications, filings, statements, returns, notices, reports, exemption or such other documents to a single Governmental Entity in each calendar year. Submission of any filing by more than one Legal Entity to the same Governmental Entity or by one Legal Entity to multiple Governmental Entities shall require additional Filing licenses.

"Government Entity" means any federal, state, foreign governmental entity, securities authorities, agency, commission, other regulatory, self-regulatory or enforcement authorities or any courts, administrative agencies or commissions or other governmental authorities or instrumentalities.

"Legal Entity" means any individual, person, partnership, joint venture, corporation, company or other form of enterprise, domestic or foreign.

Flat Fee/Fixed Fee is defined as a fixed package license fee for the software.

Rapid Mart (RM) Module is defined as a separate unit of software that may include a specific subject-oriented repository of data and/or content designed to answer specific questions for a specific set of users. E.g. Sales, Inventory, Purchasing, General Ledger, HR etc.

Available Edge Rapid Marts (RM) Modules: SAP (11 modules available); Oracle E-Business Suite (11 modules available); PeopleSoft (5 modules available); Siebel (3 modules available).

Metrics mainly used with Sybase Products

Application Connection is a single licensed SUP User or SUP & Afaria HDM User or SUP for Consumers User accessing a single Application. "Application" is a set of related functionality developed by an SUP Developer User Using SUP or a single mobile application (limited to those mobile applications that are (i) separately licensed from SAP by Ordering Activity and (ii) prescribed for Use with SUP, if any).

Laptop Device is defined as laptop computer.

Limited Runtime Option Productivity Apps are those licensed SAP Enterprise Integration for SAP Mobile Applications or SAP Partner Certified Mobile Apps stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option-for-productivity-apps/index.epx>

Limited Runtime Option Apps are those licensed SAP Enterprise Integration for SAP Mobile Applications or SAP Partner Certified Mobile Apps stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option/index.epx>

Terabyte (TB) is defined as the amount of data stored in terabytes in the main database of Sybase IQ Server in whole numbers (fractions must be rounded up). If VLDB option is licensed, it must be licensed to match the size of the entire main database of the Sybase IQ Server

Exhibit 3 - Package Restrictions

1. SAP Business Suite and Enterprise Foundation

- 1.1 **SAP Business Suite.** SAP Business Suite when delivered with embedded analytics capabilities includes SAP provided preconfigured business content, including, but not limited to, preconfigured SAP Crystal Reports and SAP BusinessObjects Xcelsius Enterprise Dashboards that can display data from queries. In order to view, use or modify such preconfigured embedded analytics capabilities shipped with the SAP Business Suite ("Embedded Analytics"), Ordering Activity needs to license the appropriate SAP Business Objects software as well as the required SAP Named User licenses. Ordering Activity may additionally download, install and use the Crystal Reports Viewer for SAP Business Suite Applications to display lists from ALV as SAP Crystal Reports at no added cost under the terms and conditions applicable to SAP Business Suite applications.
- 1.2 **Enterprise Foundation.** Unlike other Package licenses the Enterprise Foundation package comes with 5 (five) SAP Application Professional Users in addition to the use rights for the scope of Enterprise Foundation capabilities. Any additionally required Named Users need to be licensed separately. The license for data destruction in Human Capital Management is included in the ERP license.
- 1.3 **Enhancement Packages for Certain SAP Software.** The enhancement packages for certain SAP Software may provide new and improved software functionality. Each SAP enhancement package contains business functions that Ordering Activity can activate separately and independently from each other. The standard licensing model for SAP also applies to business functions shipped as part of SAP enhancement packages. To activate business functions, additional licenses may be required. In each of these cases, the respective license needs to be in place prior to activating and Using the business function. Upon request, SAP account executives can provide additional information about the required licenses.

2. Enterprise Extensions

Enterprise Extension Packages require licensing of the Enterprise Foundation Package.

- 2.1 SAP Payroll Processing. Payroll Processing for the USA requires partner software that is subject to additional license fees.
- 2.2 BSI U.S. Payroll Tax Processing. BSI requires licensing of SAP Payroll Processing. Special maintenance agreement required.
- 2.3 SAP Treasury and Risk Management and SAP Treasury and Risk Management, Public Sector. Use of SAP Treasury and Risk Management is limited to a maximum of a hundred (100) active, investment-related security classes in the securities area*. In case a larger number of security classes are required, the Industry Package SAP Investment Management for Insurance and/ or SAP Investment Controlling for Insurance have to be licensed.

* In the SAP system each security (e.g. stocks) is a class. The class data includes all the structure characteristics of a security. Since the creation of transactions and the management of positions in the transaction manager are based on product types, each class needs to be assigned to a product type.
- 2.4 SAP Environment, Health and Safety (EHS) Management; SAP EHS Management, health and safety; SAP EHS Management, environmental compliance; SAP EHS Management, product safety; SAP EHS Management, product and REACH compliance. The products listed above provide a framework to support customers in achieving compliance with certain environment, health and safety regulatory requirements. This framework needs to be adjusted, configured and/or expanded by the Ordering Activity to meet the specific requirements of the customer. SAP does not warrant or guarantee regulatory or other compliance. Ordering Activity has the obligation to implement those products in a manner such that regulatory or other compliance requirements are adequately reflected.
- 2.5 SAP Environment, Health and Safety (EHS) Management; SAP EHS Management, health and safety. SAP Named Users are not required for employees, contractors, and business partner users that interact with the incident management functionality of SAP EHS Management solely to enter data for initial incident reporting and to provide data for incident investigations. Such data entry may occur asynchronously (off-line) via the Adobe Interactive Form tool, synchronously (on-line) by direct interaction with the SAP system, or via mobile devices. This exception applies only to incident management data entry use, and does not apply to any other uses of the incident management functionality or any other functionality of SAP EHS Management including incident processing, investigation, and performance and regulatory reporting.
- 2.6 SAP Incentive and Commission Management. The list price comprises the management of the basic elements commission recipients and contracts, as well as the basic processes valuation, remuneration, closing, and settlement. The option price comprises further functionalities such as manual commission posting, bonus calculation, and target agreement management. Excluded is the functionalities portfolio assignment, credentialing, and risk reduction strategies (actual commissioning and liability management). In case such functionalities are required the corresponding industry package has to be licensed.
- 2.7 SAP Credit Management, SAP Biller Direct, SAP Collections and Dispute Management. SAP Named Users are required for employees of Ordering Activity and employees of third parties acting as agents on behalf of Ordering Activity who are using the applications listed above. SAP Named Users are not required for employees of Business Partners who are accessing the software on behalf of such Business Partner.

3. Industry Packages

- 3.1 SAP Upstream Contracts Management for Oil & Gas. Functional support for any local or legal requirements for any of these solution components is not covered by the standard maintenance agreement. A separate service agreement must be concluded for this purpose.
- 3.2 SAP Secondary Distribution for Oil & Gas. The license for "SAP Secondary Distribution for Oil & Gas" includes a license of the industry package "SAP Downstream Sales & Logistics for Oil & Gas" for up to 25,000 BOEPD. For these 25,000 BOEPD, customers need to license at least 4 "SAP Secondary Distribution for Oil & Gas" users per 1000 BOEPD (e.g. 10 000 sold BOEPD -> licensing of 40 users minimum). Ordering Activitys selling more than 25,000 BOEPD need to license the industry package "SAP Downstream Sales & Logistics for Oil & Gas" separately for the sales volumes above 25,000 BOEPD. Refined product volumes are considered as equal to crude oil volumes, e.g. one barrel of diesel equals one barrel of crude oil.
- 3.3 SAP Military Data Exchange. SAP Military Data Exchange is not available for all countries, for details please see contact information at www.sap.com/defense-security
- 3.4 SAP Customer Financial Information Management for Insurance. For the use within the SAP solutions Policy Management FS-PM, Claims Management FS-CM, Billing and Payment FS-CD, Incentive Management FS-ICM a separate purchase is not required.
- 3.5 SAP Social Services Management for Public Sector and SAP Constituent Services for Public Sector. In Public Sector scenarios, constituents are covered by the respective Package license and do not need to be licensed as a SAP Named User.
- 3.6 SAP Tax and Revenue Management for Public Sector. External users accessing the above packages for a strongly restricted set of tasks (include the viewing of documents, change of address, paying of bills and confirmations of delivery and e-filing) do not require a SAP Named User.
- 3.7 SAP Electronic Toll Collection for Public Sector, SAP ERP Billing. External users accessing the above packages for a strongly restricted set of tasks do not require a user license. These tasks are the viewing of documents, change of address (creation and change of a contract account), paying of bills (e.g. pre-paid top-up process) and confirmations of delivery.

- 3.8 SAP Distribution Monitoring for Postal. External users accessing SAP Distribution Management Postal for the strongly restricted set of tasks of viewing of the status / delivery and confirmations of event messages in Event Management via the Web interface do not require a SAP Named User license.
- 3.9 SAP Convergent Charging for post-paid Telecommunications; SAP Convergent Charging for pre-paid Telecommunications; SAP Charging and Billing for High Tech; SAP Convergent Charging, version for Toll Collection; SAP Billing for TC; SAP Charging and Billing for Banking; SAP Convergent Charging for TC. Convergent Charging and Billing Software included in the referenced products may not be Used for, or in support of, billing or revenue share calculation for pre-paid telecommunications products, services or systems in the Restricted Countries or to remotely support prepaid telecommunication systems in the Restricted Countries (collectively, the "Prohibited Pre-Paid Telecom Usage"). All warranties, including without limitation any warranties of non-infringement of intellectual property rights and any associated indemnities are expressly excluded to the fullest extent provided by applicable law in connection with any Prohibited Pre-Paid Telecom Usage. The Restricted Countries are Australia, Brazil, Canada, China, Korea, Israel, Japan and Mexico and the United States. "Telecommunication" as used herein refers to products, services, or systems that provide mobile, Voice Over IP (VOIP), or other types of telephone calls..

4. SAP NetWeaver

Adapters are only available with a SAP NetWeaver PI license and are licensed for a defined release of a backend system or protocol. Maintenance for adapters covers the support of connectivity to a backend system or compliance to a protocol specification at that given release at the time of licensing. It is within SAP's sole discretion to extend the use rights of an adapter (either partly or fully) to a higher release of the respective backend system or protocol. This applies to change of version of protocols as well.

- 4.1 SAP NetWeaver Process Integration (PI). SAP NetWeaver Process Integration may be used by Ordering Activity to integrate Ordering Activity's SAP applications as part of an application-specific runtime license of SAP NetWeaver Foundation. For any other use (e.g. integration into 3rd party applications or non-SAP Applications), SAP NetWeaver Process Integration needs to be licensed separately.
- 4.2 SAP NetWeaver Process Integration (PI) Adapters. The adapters listed here are available free of charge with the SAP NetWeaver PI or SAP Process Orchestration license: CICS Adapter by iWay, TMS/IMS Adapter by iWay, JD EDWARDS ONE WORLD XE Adapter by iWay, ORACLE Adapter by iWay, PeopleSoft Adapter by iWay, Siebel Adapter by iWay, JDE World Adapter by iWay, SAP NetWeaver Adapter for IDOCs, SAP NetWeaver Adapter for RFCs, SAP NetWeaver Adapter for File/FTP, SAP NetWeaver Adapter for Http(s), SAP NetWeaver Adapter for SOAP, SAP NetWeaver Adapter for JMS, SAP NetWeaver Adapter for JDBC, SAP NetWeaver Adapter for Mail Protocols (pop, imap, smtp), SAP NetWeaver Adapter for SAP BC Protocol.
- 4.3 SAP NetWeaver OpenHub. SAP NetWeaver OpenHub has to be licensed whenever data is being extracted and transferred from SAP NetWeaver BW into third party target systems.
- 4.4 Planning Application Kit. A license is required for either SAP BusinessObjects Planning, version for SAP NetWeaver or SAP BusinessObjects Planning and Consolidation, version for SAP NetWeaver whenever the Planning Applications Kit is Used to develop planning applications that leverage in-memory processing of core planning functions
- 4.5 SAP NetWeaver BeXBroadcaster. Broadcasting recipients accessing SAP solutions or their respective components need to be licensed for such solutions. SAP NetWeaver BeX Broadcaster, provides Ordering Activities with the ability to broadcast SAP NetWeaver BW information (e.g. BeX reports, BeX Queries and BeX workbooks) to support the distribution of mass information to large audiences in a personalized and secure manner.
- 4.6 SAP NetWeaver Business Warehouse Accelerator. Certain hardware restrictions may apply – details are available upon request.
- 4.7 SAP NetWeaver Enterprise Search. Certain hardware restrictions may apply – details are available upon request.
- 4.8 SAP NetWeaver Master Data Management. For all Enterprise Master Data Management scenarios based on SAP NetWeaver Master Data Management products, a SAP Professional Named User license is required for users maintaining MDM data. In an Enterprise Master Data Management scenario, there is no named user license requirement for users reading/viewing and/or browsing MDM data. This includes, but is not limited to a business user using a search application to identify a record in the MDM repository or catalog users accessing a web catalog.
- 4.9 SAP NetWeaver Master Data Management, product and other data. SAP NetWeaver Master Data Management, product and other data includes the license rights of SAP NetWeaver Master Data Management, printing and Product Content Management (PCM).
- 4.10 SAP Enterprise Master Data Management. SAP NetWeaver MDM, global data synchronization is not included into the scope of SAP Enterprise Master Data Management. For all Enterprise Master Data Management scenarios based on SAP NetWeaver Master Data Management products, a SAP Professional Named User license is required for users maintaining MDM data. In an Enterprise Master Data Management scenario, there is no named user license requirement for users reading/viewing and/or browsing MDM data. This includes, but is not limited to a business user using a search application to identify a record in the MDM repository or catalog users accessing a web catalog. For all embedded master data management scenarios based on SAP Master Data Governance products the appropriate Named User is required.
- 4.11 SAP NetWeaver Master Data Management, data quality option. SAP Master Data Management, data quality option can only be sold and used in combination with SAP NetWeaver Master Data Management or SAP Enterprise Master Data Management. As such, SAP Named User policies for these products apply. SAP Master Data Management, data quality option allows using SAP BusinessObjects DataServices (DataServices) for SAP Master Data Management use cases only. A SAP Master Data Management use case is defined as a scenario where data is (i) cleansed, de-duplicated and loaded via DataServices into SAP NetWeaver MDM (MDM) or SAP Master Data Governance (MDG) or (ii) data is distributed from MDM or MDG to downstream systems via

DataServices. DataServices is used for data management within the MDM repository of SAP NW MDM or SAP MDG. This includes but is not limited to on-entry validation and matching or periodic cleansing and de-duplication of the repository.

- 4.12 SAP NetWeaver Identity Management for employees and SAP NetWeaver Identity Management for non-employees. SAP NetWeaver Identity Management may be used by Ordering Activity to integrate Ordering Activity's SAP applications as part of an application-specific runtime license of SAP NetWeaver Foundation. For any other use (e.g. Integration into 3rd party applications or non-SAP applications), SAP NetWeaver Identity Management needs to be licensed.
- 4.13 SAP NetWeaver Foundation for Third Party Applications. Customers must decide the first time they purchase or license a SAP NetWeaver Foundation for Third Party Applications license which model (user-based or CPU-based) they choose. Switching or mixing CPU-based and user-based licensing for SAP NetWeaver Foundation for Third Party Applications is not permitted.
- 4.14 SAP NetWeaver Portal, enterprise workspaces. SAP NetWeaver Portal enterprise workspaces include the runtime rights of SAP NetWeaver Enterprise Portal. In case SAP NetWeaver Portal enterprise workspaces are used standalone without access to any SAP application SAP Named Users licenses are not required.
- 4.15 Duet Enterprise. Duet Enterprise is delivered with a limited number of Duet Enterprise Starter Services specified in the Documentation and at: https://websmp107.sap-ag.de/~sapdownload/012002523100014103542010E/Duet_Enterprise_services.htm. SAP Platform Standard Users may access Duet Enterprise Starter Services provided (i) Ordering Activity has licensed the package license for Duet Enterprise; and (ii) Duet Enterprise Starter Services are accessed solely through Microsoft SharePoint leveraging Duet Enterprise. Any Use of Duet Enterprise beyond the Duet Enterprise Starter Services requires Ordering Activity to license the applicable SAP Named User type and category. In addition, Ordering Activity is also licensed to Use SAP NetWeaver Gateway but only via MS Sharepoint, MS Office and/or Duet Enterprise for the sole purpose of performing Duet Enterprise functions. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license.
- 4.16 SAP NetWeaver Gateway (embedded license). Certain SAP Software may contain an embedded license of SAP NetWeaver Gateway. Any Use of SAP NetWeaver Gateway (embedded license) beyond the scope of such SAP Software requires separate licensing of SAP NetWeaver Gateway.
- 4.17 SAP NetWeaver Process Orchestration. SAP NetWeaver Process Orchestration includes the rights to use SAP NetWeaver Process Integration (PI), SAP NetWeaver Business Process Management (BPM) and SAP NetWeaver Business Rules Management (BRM).
- 4.18 SAP NetWeaver Single Sign-On Internal User and SAP NetWeaver Single Sign-On External User. Users performing developer or administrative functions require a Named User license in addition to the Package License for the Software.
- 4.19 SAP NetWeaver Landscape Virtualization Management, enterprise edition. Licenses for LVM instances are not permanently assigned to a specific LVM instance, but can be pooled allowing them to be assigned and unassigned to LVM instances as necessary based on the applications being managed by SAP NetWeaver Landscape Virtualization Management. Licenses for the copy/refresh option must be assigned to a specific SAP system/application (e.g. ECC, CRM, SRM, etc.), and can only be reassigned to a different system/application once in a 12 month period. Ordering Activity acknowledges and agrees that it is Ordering Activity's responsibility to ensure that it has all necessary third party license rights required to clone and/or copy an environment using this software, and Ordering Activity has obtained and will maintain all such license rights necessary to use the functionality described herein, including without limitation the license right to operate the target system landscape after cloning and/or copying. Without limiting the materiality of other provisions of this Attachment, the parties agree that any violation by Ordering Activity of third party license rights in this respect will be a material breach of these Attachment A terms.

5. SAP BusinessObjects

5.1 SAP BusinessObjects (BA&T License Model)

5.1.1 SAP BusinessObjects Business Intelligence

There are two ways to license SAP BusinessObjects Business Intelligence capabilities:

- (1) SAP BusinessObjects Business Intelligence Suite model The BI Suite includes the SAP BusinessObjects BI platform along with engines for the following: the Mobile engine, the Crystal Reports engine, the Web Intelligence engine, the Dashboards engine, the Explorer engine, the Analysis, for Microsoft Office engine, and the Analysis, for OLAP engine. The BI Suite Package engines include rights to view content for the BI clients identified above.
- (2) Component (non-Suite) model. The SAP BusinessObjects Business Intelligence products that comprise the SAP BusinessObjects Business Intelligence Suite can be purchased separately via a component model if preferred. Each of the following (the "Client Engines") can be purchased individually: the SAP BusinessObjects BI platform, the Mobile engine, the Crystal Reports engine, the Web Intelligence engine, the Dashboards engine, the Explorer engine, the Analysis, for Microsoft Office engine, and the Analysis, for OLAP engine. The engines include rights to view content for the BI clients identified above that have been explicitly purchased.

For a single Deployment of SAP BusinessObjects BI platform, either the SAP BusinessObjects Business Intelligence Suite model or the Component Model must be used. They cannot both be used in a single Deployment of SAP BusinessObjects BI platform.

Author/Designer Licenses are available in two ways:

- (a) SAP Application Business Analytics Professional User
- (b) SAP Application BI Limited User

Both the SAP BusinessObjects Business Intelligence Suite and the Component models can be licensed using either the Concurrent Session license metric or the Named User (NUL) license metric.

If purchased using the Component (non-Suite) Model, the Client Engines must be licensed using the same metric (NUL or Concurrent Sessions) as the BI Platform and cannot exceed the number of licenses for the BI Platform using the same license metric.

5.1.2 Dashboard and Visualization

5.1.2.1 SAP BusinessObjects Dashboards software

If you refresh, publish, push or otherwise change data contained in any Dashboards generated SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)), you must have rights to a Dashboards Author/Design License.

5.1.3 BA&T SAP Business Objects Explorer accelerated package

The SAP BusinessObjects Explorer package is intended to support a limited use scenario of search and exploration with SAP BusinessObjects Business Intelligence against both in-memory (accelerated) data sources and traditional data sources. The SAP BusinessObjects Explorer Package includes the rights to use Explorer in the following scenarios (1) search and exploration against data via the SAP BusinessObjects semantic layer associated with this license, (2) search and exploration against data resident in accelerated data sources and (3) search and exploration against data contained within Excel or .csv files.

The BA & T SAP BusinessObjects Explorer accelerated package is comprised of:

1. SAP BusinessObjects Explorer engine
2. SAP BusinessObjects BI platform (to be used only to support SAP BusinessObjects Explorer)
 - a. SAP BusinessObjects BI platform. Ordering Activity is licensed to use only the following features of the SAP BusinessObjects BI platform: (a) Central Management Console (CMC), (b) third party authentication, (c) exploration of in-memory-based indexes with Explorer, (d) Central configuration Manager, (e) information design tool, (f) Translation Manager, (g) Lifecycle Management tool, (h) Upgrade Management tool, (i) BI launch pad
3. SAP BusinessObjects Data Integrator. Use is limited as follows:
 - a. Data Integrator and BusinessObjects BI platform may only be used in conjunction with SAP BusinessObjects Explorer package.
 - b. Data Integrator may not be installed on the same blade as the SAP NetWeaver BWA blade or other data platforms.
 - c. Data Integrator may not be used for standalone ETL (extract, transform and load) projects.

License rights do not include SAP BusinessObjects Mobile engine or specific in-memory platforms (which must be licensed separately).

5.1.4 SAP BusinessObjects Enterprise Information Management Solutions

5.1.4.1 SAP BusinessObjects Enterprise Information Management (EIM) Packages

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in the EIM packages may be installed and Used. Address and Geocoding directories are not included and must be licensed separately.

5.1.5 SAP BusinessObjects Data Services, SAP BusinessObjects Data Integrator, and SAP BusinessObjects Data Quality Management **software**

Address and Geocoding directories are not included and must be licensed separately.

5.1.5.1 SAP BusinessObjects Data Services

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Data Services may be installed and Used.

The Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Data Services includes a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.

5.1.5.2 SAP BusinessObjects Data Quality Management

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Data Services may be installed and Used. The Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Data Services includes a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.

5.1.5.3 Data Quality Management ("DQM") SDK

A license to Data Quality Management SDK may be acquired in two configurations as follows: (1) a stand-alone or non-bundled configuration ("DQM SDK Non-Bundled Configuration") and (2) bundled with CPU Metric licenses to Data Services and/or DQM Premium ("DQM SDK Bundled Configuration"). If acquired in the DQM SDK Non-Bundled Configuration, then a license to DQM SDK is provided as a Server License. If acquired in the DQM SDK Bundled Configuration, then licenses to DQM SDK are included as part of the CPU Metric licenses of Data Services and/or DQM Premium licensed by Ordering Activity, such that a subset of the number of such CPU licenses licensed by Ordering Activity may be Used to solely run DQM SDK, provided that the aggregate number of licenses deployed for DQM SDK and Data Services and DQM Premium must not exceed the total of Data Services and DQM Premium licenses acquired. For example, if Ordering Activity has in the aggregate licensed six CPU licenses of Data Services and/or DQM Premium, then Ordering Activity may Use two CPU licenses to run DQM SDK and the remaining 4 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use three CPU licenses to run DQM SDK and the remaining 3 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use all six CPU licenses to run DQM SDK.

- 5.1.5.4 SAP BusinessObjects Data Quality Management software, version for SAP Solutions
When licensing SAP BusinessObjects Data Quality Management, version for SAP Solutions, the data quality functions must be Used solely with activities initiated within the SAP applications. When licensed this way, the Use of data quality functions for purposes outside the application it was licensed for is strictly prohibited. A separate license of SAP BusinessObjects Data Quality Management or SAP BusinessObjects Data Services must be licensed if the Use of data quality functions is required outside of the SAP application. Deployment of this license means Ordering Activity has the ability to spread the licensed number of CPU's across a single or multiple servers as long as the total number of CPU's Used across the servers add up to the amount of CPUs Ordering Activity is licensed for.
- 5.1.6 SAP BusinessObjects Rapid Marts Products
When licensing SAP BusinessObjects Rapid Marts, a license for SAP BusinessObjects Data Integrator or Data Services must also be obtained. If SAP BusinessObjects Rapid Marts is licensed with SAP BusinessObjects Data Integrator or Data Services, an individual SAP BusinessObjects Rapid Marts license must be obtained for each SAP BusinessObjects Data Integrator or Data Services license. Copying one SAP BusinessObjects Rapid Marts license and then deploying it to other instances is prohibited.
- 5.1.7 SAP BusinessObjects Metadata Management
Metadata Management comes with a limited use license of SAP BusinessObjects BI Platform. Ordering Activity may use SAP BusinessObjects BI Platform only in conjunction with Metadata Management. Accessing data that is not specifically created or Used by Metadata Management is in violation of this license. Furthermore, Ordering Activity may Use only the following features of SAP BusinessObjects BI Platform: (a) Central Management Server (CMS) for user or group authentication purposes and (b) Central Management Console for security related to user management and access to integrator sources, source groups, metapedia, utilities and managing and scheduling integrator source runs and utilities runs.
- 5.1.8 SAP BusinessObjects Data Migration Starter Package
SAP BusinessObjects Data Migration Starter Package is licensed on a Term License basis.
- 5.1.9 SAP BusinessObjects Data Migration Starter Package
SAP BusinessObjects Data Migration Starter Package may only be deployed in conjunction with SAP BusinessObjects Metadata Management and/or Data Services on a single server having a maximum of four CPUs. SAP BusinessObjects Data Migration Starter Package may only be used in conjunction with a single target system instance where the system ID of the target system is provided in writing to SAP at the beginning of the Ordering Activity's implementation project.
- 5.1.10 SAP BusinessObjects Enterprise Performance Management
- 5.1.10.1 SAP BusinessObjects Financial Consolidation. Use of SAP BusinessObjects BI Platform included with SAP BusinessObjects Financial Consolidation is limited solely to the following features: (a) use of the Central Management Server ("CMS") to authenticate and/or authorize users for the applications listed above; (b) use of the Central Management Console ("CMC") to administer user rights and privileges as they pertain to the application and (c) use of Infoview to navigate and launch Analyzer workspaces.
- 5.1.11 SAP BusinessObjects Financial Information Management
When licensing SAP BusinessObjects Financial Information Management, SAP BusinessObjects Data Integrator may be Used:
- solely with certain licensed SAP BusinessObjects solutions for SME, SAP BusinessObjects analytic applications and SAP NetWeaver BW, together with certain licensed SAP BusinessObjects EPM applications, which is specified and Used in accordance with the Documentation; and
 - solely for Use with SAP BusinessObjects Financial Information Management.
- SAP BusinessObjects Financial Information Management is to be licensed whenever data integration with third party systems is required.
Limited functionality of Financial Information Management for which Ordering Activity does not hold a license ("FIM Runtime Software") may be utilized by certain licensed SAP Software as described in the Documentation. Until Ordering Activity has expressly licensed the FIM Runtime Software, Ordering Activity's Use of the FIM Runtime Software is limited to access by and through the licensed SAP Software for the sole purpose of enabling performance of the licensed SAP Software and integrating data from licensed SAP Software as specified in the Documentation.
- 5.1.12 SAP Electronic Invoicing for Brazil (Nota Fiscal Electronica)
SAP Electronic Invoicing for Brazil – Outbound and Inbound (Nota Fiscal Electronica – Outbound or Inbound) includes a runtime license SAP PI.
- 5.1.13 SAP BusinessObjects Governance, Risk and Compliance Solutions.
SAP BusinessObjects Governance, Risk and Compliance (GRC) solutions may utilize limited functionality of Xcelsius Enterprise and Crystal Reports for which Ordering Activity does not hold a license ("Reporting Runtime Software"). Until Ordering Activity has expressly licensed the Reporting Runtime Software, Ordering Activity's Use of such Reporting Runtime Software is limited to access by and through GRC, and any permitted Modifications thereto for the sole purpose of enabling performance of GRC. The Reporting Runtime Software may only be used by licensed SAP Named Users for GRC. Ordering Activity is not licensed to use any Crystal Reports components for .Net application development.
- 5.1.13.1 SAP BusinessObjects Access Control, starter edition
Use of SAP BusinessObjects Access Control, starter edition is limited to the measuring, monitoring and reporting of access risks; and administering and reporting of superuser access.
- 5.1.14 SAP BusinessObjects solutions for SME
- 5.1.14.1 SAP BusinessObjects Edge BI (Edge BI)

Edge BI licensed by Users has a limit of 250 users per server. Edge BI includes publishing up to 1000 Recipients. Edge BI includes one (1) SAP Business Analytics Professional user license and nine (9) SAP BI Limited user licenses for each block of 10 users or 5 Concurrent Sessions licensed exclusively for the use of Edge BI. Edge BI licensed on a Concurrent Session License basis shall not exceed 50 Concurrent Sessions in a single deployment. After Ordering Activity acquired Concurrent Session packages, Ordering Activity may license add-on user licenses of Edge BI in the same quantity as the number of Concurrent Session Licenses.

5.1.14.2 SAP BusinessObjects Edge BI, version with data management

SAP BusinessObjects Data Quality Management and SAP BusinessObjects Data Integrator delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 named users or 50 Concurrent Sessions) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to three CPUs. SAP BusinessObjects Data Quality Management and SAP BusinessObjects Data Integrator may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore.

5.1.14.3 SAP BusinessObjects Edge BI, version with data integration

SAP BusinessObjects Data Integrator delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 named users or 50 Concurrent Sessions) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to three CPUs. SAP BusinessObjects Edge BI, version with data integration and SAP BusinessObjects Data Integrator may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore. When SAP BusinessObjects Data Integrator is used with SAP BusinessObjects Edge Rapid Marts, it may be deployed on a server with up to 4 CPUs.

5.1.14.4 SAP BusinessObjects Edge Data Services, Edge Data Integrator and Edge Data Quality Management (Edge EIM Solutions)

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Edge Data Services may be installed and Used. For SAP BusinessObjects Edge Data Services and Edge Data Quality Management, Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Edge Data Services and Edge Data Quality Management include a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight. Address and Geocoding directories are not included in any of the Edge EIM Solutions and must be licensed separately. Each deployment of any of the Edge EIM Solutions is limited to a single server, with a minimum of 3 CPUs and a maximum of 5 CPUs. All Edge EIM solutions include the SAP Business Analytics Professional User license exclusively for the use of the applicable Edge EIM Solutions, and do not require additional SAP Application Named Users.

5.1.14.5 SAP BusinessObjects Edge Rapid Marts

When licensing the SAP BusinessObjects Edge Rapid Marts Product, a license for SAP BusinessObjects Edge BI, version with Data Integration or SAP BusinessObjects Edge BI, version with Data Management must also be obtained. SAP BusinessObjects Edge Rapid Marts may only be deployed on a single server and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server with up to 4 CPU. SAP BusinessObjects Edge Rapid Marts can only be used in conjunction with SAP BusinessObjects Edge BI. Copying one SAP BusinessObjects Edge Rapid Marts license and then deploying it to other instances is prohibited. Each SAP BusinessObjects Edge Rapid Mart includes the related Application Interface license

5.1.14.6 SAP BusinessObjects Edge Planning and Consolidation

The licensing of the SAP BusinessObjects Edge Planning and Consolidation is restricted to 100 users maximum on a single server,

5.1.14.7 SAP BusinessObjects Edge Strategy Management

License limitation: Maximum deployment of single application server only and not more than 70 users. Each deployment is limited to 25 contexts and 25 data models.

5.1.15 SAP BusinessObjects analytic solutions

Limited License: Use of the SAP BusinessObjects analytic solution ("BA Solutions"), and any SAP software licensed as part of the BA Solution ("BA software"), is limited to the BA Solution specific purpose ("Purpose").

BA software: SAP may offer BA software contained in the BA Solution also as a separate SAP software product on the SAP list of prices and conditions. Terms and conditions for, and functionality of BA Software may be different from the separate SAP software product. Additional functionality of such SAP software product may be subject to a separate license agreement and additional license fees.

5.1.16 SAP BusinessObjects Enterprise Risk Reporting for Banking.

Use of this Software is limited to measuring and monitoring enterprise risk for Ordering Activity's banking operations.

5.1.17 SAP BusinessObjects Trade Promotion Effectiveness Analysis

Use of this Software is limited to performing analysis on trade promotion effectiveness.

5.1.18 SAP BusinessObjects Sales Analysis for Retail

Use this Software is limited to performing retail and point of sale data analysis.

5.1.19 SAP BusinessObjects Upstream Operations Performance Analysis application

Use of this Software is limited to the analysis surrounding of the operational data supporting upstream production of oil and gas hydrocarbons.

- 5.1.20 SAP BusinessObjects Planning and Consolidation for Banking
Use of this Software is limited to the following for Ordering Activity's banking operations: financial planning, budgeting, forecasting and consolidations, and reporting of financial and other plan data.
- 5.1.21 SAP BusinessObjects Planning and Consolidation for Public Sector
Use of this Software is limited to the following for Ordering Activity's Public Sector business operations: long range business planning, forecasting, financial consolidation and reporting, and performance management.
- 5.1.22 SAP BusinessObjects Planning for Public Sector
Use of this Software is limited to long range planning, budgeting and planning, forecasting and reporting in the Public Sector.
- 5.1.23 SAP BusinessObjects Sales and Operational Planning rapid deployment solution
Use of this Software is limited to the Sales and Operational business planning process such as consensus demand management, supply visibility, rough cut capacity aggregation, and monitoring business process utilizing forecast input from Sales, Marketing, Operations and Finance.
- 5.1.24 Additional License Conditions for Knowledge Accelerator
- 5.1.24.1 SAP BusinessObjects Knowledge Accelerator (other than ON RWD platform. SAP BusinessObjects Knowledge Accelerator may be used to meet Ordering Activity's employee training needs and may not be used by or on behalf of any third party. SAP BusinessObjects Knowledge Accelerator other than on RWD Platform is an older version of Knowledge Accelerator (pre-XI release 3) which will continue to be sold by SAP BusinessObjects. The following statements relate only to this older version of Business Objects Knowledge Accelerator: Any customization tools included with the SAP BusinessObjects Knowledge Accelerator Software (Global Knowledge TM On-Demand-for-Business Objects Software) shall be used only for modifying or customizing the content developed by SAP BusinessObjects Knowledge Accelerator Software, and only by the number of instructional designers and administrators specified in this Order Schedule. Ordering Activity shall not modify, reverse engineer, or distribute for commercial or non-commercial use such tools, or use such tools to develop other content, including content related to other Licensor products.
- 5.1.24.2 Knowledge Accelerator on RWD Platform. SAP BusinessObjects Knowledge Accelerator may be used to meet Ordering Activity's employee training needs and may not be used by or on behalf of any third party. Notwithstanding any other provision of the Training Schedule, NULs of Knowledge Accelerator may not be transferred to other individuals, even if the original user is no longer permitted access to Knowledge Accelerator. If an individual is no longer employed by Ordering Activity, Ordering Activity may transfer such individual's NUL to another user.
- 5.1.25 Predictive Workbench. Predictive Workbench includes an embedded third party product, which must be used in connection with BusinessObjects Enterprise and not on a standalone basis.
- 5.2 SAP BusinessObjects (Classic Solutions Model)
- 5.2.1 SAP BusinessObjects Enterprise
- 5.2.1.1 Dashboard Builder. The software components, tools and utilities supplied with Dashboard Builder may only be used with the product with which they were provided. In addition, the Web Intelligence utilities provided with Dashboard Builder may only be used to view the analytic templates provided with Dashboard Builder.
- 5.2.1.3 SAP BusinessObjects Enterprise. You may not combine licenses for different editions of BusinessObjects Enterprise in a single Deployment (for example, Premium licenses may not be combined with Professional licenses in the same Deployment). You may use BusinessObjects Enterprise Professional to publish and distribute only one of SAP BusinessObjects' proprietary report format types (Crystal Reports, Web Intelligence/Desktop Intelligence/BusinessObjects/Voyager). Web Intelligence and Desktop Intelligence are deemed a single proprietary report format for this purpose. If you wish to publish and distribute more than one report format type, you must acquire BusinessObjects Enterprise Premium. Notwithstanding the foregoing, if Ordering Activity migrates from a combined BusinessObjects and Web Intelligence Deployment to BusinessObjects Enterprise, Ordering Activity may use both BusinessObjects and Web Intelligence report types in that Deployment.
- 5.2.1.3 SAP BusinessObjects Product Options. Options for BusinessObjects Enterprise Professional, Crystal Enterprise Professional, and Crystal Reports Server (collectively, "Underlying Application") are licensed as add-ons to a Deployment. Options may include Crystal Reports Explorer, Auditing, Publishing, Live Office, Integration Kits for third party applications and other products designated as Options for an Underlying Application. If both the Underlying Application and the Options are licensed on a CPU metric, the number and type of Option licenses must match the number and type of the Underlying Application licenses in the Deployment in which the Options are used
- 5.2.1.4 Web Intelligence Interactive Viewing. Keycodes to Web Intelligence Interactive Viewing unlock all features of the full Web Intelligence product. However, Web Intelligence Interactive Viewing is a limited license and may not be utilized to edit or create documents.
- 5.2.2 SAP BusinessObjects BI Package. SAP BusinessObjects BI Package includes a restricted license of SAP BusinessObjects Information Steward. Use of the SAP BusinessObjects Information Steward is limited to the Metadata Management and Metapedia functionality.
- 5.2.3 SAP BusinessObjects BI Starter Package. The licensing of the SAP BusinessObjects BI starter package is restricted to maximum of 100 users maximum on a single server.
- 5.2.4 Dashboard and Visualization

- 5.2.4.1 SAP® BusinessObjects™ Xcelsius® software. If you refresh, publish, push or otherwise change data contained in any Xcelsius generated SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)), you must purchase a Xcelsius Interactive Viewing License. Xcelsius Interactive Viewing is included with and matches the Named User Licenses (“NUL”) of Crystal Reports Server and BusinessObjects Edge. Unlimited Interactive Viewing is included with Xcelsius Engage but limited to SWF files with a maximum of two connections.
- 5.2.5 SAP BusinessObjects Enterprise Information Management Solutions
- 5.2.5.1 SAP BusinessObjects Data Services, SAP BusinessObjects Data Integrator, and SAP BusinessObjects Data Quality Management software.
- If Ordering Activity wants to deploy a Data Services, Data Integrator, or Data Quality Management License to access enterprise data sources such as packaged applications, databases, or technology infrastructure products, Ordering Activity must obtain individual interface licenses such as Application Interface, Database Interface, JMS Technology Interface, or Salesforce.com Technology Interface. Address directories are not included and must be licensed separately.
- 5.2.5.2 SAP BusinessObjects Data Services. The following is included in each license of the SAP BusinessObjects Data Services:
- Five Named Users of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product)
 - Runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.
 - One license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development and Grid Computing
 - Database Interface licenses to an uncapped number of Types of databases
 - Salesforce.com Technology Interface
 - JMS Technology Interface
- 5.2.6 SAP BusinessObjects Data Integrator
- 5.2.6.1 SAP BusinessObjects Data Integrator Starter. Each license of the Software includes one Database Interface license.
- 5.2.6.2 SAP BusinessObjects Data Integrator Professional. Each license of the Software includes two Database Interface licenses.
- 5.2.6.3 SAP BusinessObjects Data Integrator Premium. Each license of the Software includes one license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development, Grid Computing, Salesforce.com Technology Interface, JMS Technology Interface; and Database Interface licenses to an uncapped number of database Types.
- 5.2.7 SAP BusinessObjects Data Quality Management
- 5.2.7.1 SAP BusinessObjects eDQ Management. Ordering Activity may Use SAP BusinessObjects eDQ Management for transactional or real-time environments only. Each license of the Software includes one license of SAP BusinessObjects DQM, cleansing package option for one language.
- 5.2.7.2 SAP BusinessObjects Data Quality Management Professional. Each license of the Software includes one Database Interface license and one license of SAP BusinessObjects DQM, cleansing package option for one language.
- 5.2.7.3 SAP BusinessObjects Data Quality Management Premium. Each license of the Software includes:
- Five Named Users of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product)
 - Runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.
 - Two Database Interface licenses
 - One license of SAP BusinessObjects DQM, cleansing package option for one language
 - SAP BusinessObjects DQM, SDK
 - One license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development and Grid Computing
- 5.2.7.4 Interface licenses. A prerequisite for any Application Interface, Database Interface or Technology Interface license is a Data Services, Data Integrator, or Data Quality Management license. Application Interface is licensed per application Instance. “Instance” means the Software may only be used for one unique connection to a specified application or technology. If multiple instances of an application are accessed by the Application Interface, then one Application Interface License must be acquired for each instance. Application Interface Unlimited, Database Interface, JMS Technology Interface and Salesforce.com Technology Interface are licensed per application, database or technology Type, as applicable. “Type” means an unlimited number of connections to the single, specified application, database or technology.
- 5.2.7.5 Data Quality Management (“DQM”) SDK. A license to Data Quality Management SDK may be acquired in two configurations as follows: (1) a stand-alone or non-bundled configuration (“DQM SDK Non-Bundled Configuration”), and (2) bundled with CPU Metric licenses to Data Services and/or DQM Premium (“DQM SDK Bundled Configuration”). If acquired in the DQM SDK Non-Bundled Configuration, then a license to DQM SDK is provided as a Server License. If acquired in the DQM SDK Bundled Configuration, then licenses to DQM SDK are included as part of the CPU Metric licenses of Data Services and/or DQM Premium licensed by Ordering Activity, such that a subset of the number of such CPU licenses licensed by Ordering Activity may be Used to solely run DQM SDK, provided that the aggregate number of licenses deployed for DQM SDK and Data Services and DQM Premium must not exceed the

total of Data Services and DQM Premium licenses acquired. For example, if Ordering Activity has in the aggregate licensed six CPU licenses of Data Services and/or DQM Premium, then Ordering Activity may Use two CPU licenses to run DQM SDK and the remaining 4 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use three CPU licenses to run DQM SDK and the remaining 3 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use all six CPU licenses to run DQM SDK.

5.2.7.6 SAP BusinessObjects Data Quality Management software, versions for use with SAP, Siebel or Informatica applications. When licensing SAP BusinessObjects Data Quality Management, version for SAP solutions, Siebel applications, or Informatica PowerCenter, the data quality functions must be Used solely with activities initiated within the SAP, Siebel, or Informatica application, respectively. When licensed this way, the Use of data quality functions for purposes outside the application it was licensed for is strictly prohibited. A separate license of SAP BusinessObjects Data Quality Management or SAP BusinessObjects Data Services must be licensed if the Use of data quality functions is required outside of the SAP, Siebel, or Informatica application. Deployment of this license means Ordering Activity has the ability to spread the licensed number of CPU's across a single or multiple servers as long as the total number of CPU's Used across the servers add up to the amount of CPUs Ordering Activity is licensed for. Grid computing licenses are not included and require to be licensed separately.

5.2.7.7 SAP BusinessObjects Rapid Marts Products. When licensing SAP BusinessObjects Rapid Marts, a license for SAP BusinessObjects Data Integrator or Data Services must also be obtained. If SAP BusinessObjects Rapid Marts is licensed with SAP BusinessObjects Data Integrator or Data Services, an individual SAP BusinessObjects Rapid Marts license must be obtained for each SAP BusinessObjects Data Integrator or Data Services license. Copying one SAP BusinessObjects Rapid Marts license and then deploying it to other instances is prohibited. In addition to the foregoing, Ordering Activity must license certain applicable Application Interfaces.

5.2.7.8 SAP BusinessObjects Metadata Management. Metadata Management comes with a limited use license of SAP BusinessObjects Enterprise. Ordering Activity may use SAP BusinessObjects Enterprise only in conjunction with Metadata Management. Accessing data that is not specifically created or Used by Metadata Management is in violation of this license. Furthermore, Ordering Activity may Use only the following features of SAP BusinessObjects Enterprise: (a) Central Management Server (CMS) for user or group authentication purposes and (b) Central Management Console for security related to user management and access to integrator sources, source groups, metapedia, utilities and managing and scheduling integrator source runs and utilities runs.

5.2.8 SAP BusinessObjects Explorer

5.2.8.1 Keycodes for Explorer used in conjunction with SAP BusinessObjects Enterprise Professional (for Enterprise Reporting) will unlock all features of the Web Intelligence product. Such Web Intelligence features may be used only by SAP BusinessObjects Explorer.

5.2.8.2 SAP Business Objects Explorer (Data Exploration Component). SAP BusinessObjects Explorer (Data Exploration Component) includes SAP BusinessObjects Data Integrator Premium and SAP BusinessObjects Enterprise. Ordering Activity's use is limited as follows:

- Data Integrator Premium and BusinessObjects Enterprise may only be used in conjunction with SAP BusinessObjects Explorer (Data Exploration Component).
- Data Integrator Premium may not be installed on the same blade as the SAP NetWeaver BWA blade.
- Data Integrator Premium may not be used for standalone ETL (extract, transform and load) projects.
- Ordering Activity is licensed to Use only the following features of SAP BusinessObjects Enterprise: (a) Central Management Console (CMC), (b) third party authentication, (c) exploration of BWA-based indexes with Explorer, (d) Central configuration Manager, and (e) Import Wizard.

5.2.9 SAP BusinessObjects solutions for SME

5.2.9.1 SAP BusinessObjects Edge BI (Edge BI). Edge BI licensed by SAP Named Users has a limit of 250 users per server. Edge BI includes publishing up to 1000 Recipients. Standalone Use of Edge BI standalone does not require SAP Application named users; when used with SAP ERP, the SAP Business Expert named user is not relevant and an SAP Professional named user is sufficient. Edge BI licensed as CAL (Concurrent Access License) through SAP BusinessObjects resellers shall not exceed 50 CALs in a single deployment. After Ordering Activity acquired CAL packages from an SAP BusinessObjects reseller, Ordering Activity may license add-on named user licenses of Edge BI in the same quantity as the number of CAL licensed.

5.2.9.2 SAP BusinessObjects Edge BI, version with data management. SAP BusinessObjects Data Quality Professional and SAP BusinessObjects Data Integrator Starter delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 users) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to two CPUs. SAP BusinessObjects Data Quality Professional and SAP BusinessObjects Data Integrator Starter may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore.

5.2.9.3 SAP BusinessObjects Edge BI, version with data integration. SAP BusinessObjects Data Integrator Starter delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 users) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge Series product is deployed, or (b) on a separate server having up to two CPUs. SAP BusinessObjects Edge BI, version with data integration and SAP BusinessObjects Data Integrator Starter may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore. When SAP BusinessObjects Data Integrator Starter is used with SAP BusinessObjects Edge Rapid Marts it may be deployed on a server with up to 4 CPUs.

6 SAP Crystal

6.1 Use Rights for All SAP Crystal Products

6.1.1 Definitions

- 6.1.1.1 "SAP Crystal software" is defined to be the following products: SAP Crystal Reports, SAP Crystal Server, SAP Crystal Reports Server, SAP Crystal Dashboard Design, SAP Crystal Presentation Design, SAP Crystal Interactive Analysis, and Xcelsius Engage Server.
- 6.1.1.2 "Desktop SAP Crystal software" is defined to be all SAP Crystal products except for SAP Crystal Server and SAP Crystal Reports Server.
- 6.1.1.3 "Connected Presentation" means any SWF file created with SAP Crystal Dashboard Design personal edition, SAP Crystal Dashboard Design departmental edition, or Xcelsius Engage Server that refresh, publish, push or otherwise change data contained in such SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)),
- 6.1.1.4 "Self Contained Presentation" means any SWF file created with SAP Crystal Presentation Design, SAP Crystal Dashboard Design personal edition, SAP Crystal Dashboard Design departmental edition, or Xcelsius Engage Server that does not refresh, publish, push or otherwise change data contained in such SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)).
- 6.1.2 SAP Crystal Software Usage. Ordering Activity may use SAP Crystal software to deliver training and consulting services for such SAP Crystal software, provided that each individual receiving the benefits of the training or consulting services has acquired a license separately to Use the applicable SAP Crystal Software.
- 6.1.3 Desktop SAP Crystal Software Usage. With the exception of Connected Presentations, and subject to Section 6.2.8, Ordering Activity may distribute the output files (e.g. PDF, SWF, XLF, WID or RPT file format) generated by the Desktop SAP Crystal software to third parties provided that Ordering Activity complies with the following requirements:
 - (a) the output files reside outside of the Software and do not directly or indirectly access the Software or activate the processing capabilities of the Software, or otherwise employ the Software;
 - (b) Ordering Activity remains solely responsible for support, technical or other assistance, required or requested by anyone receiving such output files;
 - (c) Ordering Activity does not use the name, logo, or trademark of Licensor, or the Software, without prior written permission from SAP;

Ordering Activity(d) Ordering Activity shall secure the end user's ("End User") consent to terms substantially similar to the terms set forth in Section 6.3.8.
- 6.1.4 Training Workstation License for Desktop SAP Crystal software. When Desktop SAP Crystal software is used on a workstation that is used exclusively for training, the license applies to the workstation and not the named user using the Software. One license is required per training workstation.
- 6.1.5 Use of Screenshots and wordmarks for SAP Crystal software. Ordering Activity may reproduce and distribute screen shots and wordmarks for SAP Crystal software in documents or media provided that:
 - a) The document or media isn't for commercial training material or third party training material and/or for-profit training material.
 - b) Ordering Activity's Use may not be obscene or pornographic, and Ordering Activity may not be disparaging, defamatory, or libelous to SAP, any of its software, or any other person or entity.
 - c) Ordering Activity's Use may not directly or indirectly imply SAP sponsorship, affiliation, or endorsement of Ordering Activity's product or service.
 - d) Ordering Activity may not Use the screen shot in a comparative advertisement
 - e) Ordering Activity may not alter the screen shot in any way except to resize or crop the screen shot.
 - f) Ordering Activity may not include portions of a screen shot in other product user interface.
 - g) Ordering Activity may not Use screen shots that contain third-party content unless Ordering Activity has obtained the express permission from the third-party.
 - h) Ordering Activity must include the following copyright attribution statement: "SAP product screen shot(s) reprinted with permission from SAP."
 - i) If Ordering Activity's Use includes references to a SAP Software, Ordering Activity must use the full name of the Software.
 - j) Ordering Activity may not use a screen shot that contains an image of an identifiable individual unless Ordering Activity has obtained permission from the individual.

6.2 SAP Crystal Reports runtime product

- 6.2.1 Scope. This section applies to the runtime product included in SAP Crystal Reports 2008, Crystal Reports XI, SAP Crystal Reports for Visual Studio 2010, and SAP Crystal Reports for Eclipse.
- 6.2.2 Definitions
 - 6.2.2.1 "Client Application" means an application developed by Ordering Activity that a) utilizes the Runtime Product, b) is installed fully on an end user's machine, with all report processing local to that machine, and c) adds significant and primary functionality to the Runtime Product.
 - 6.2.2.2 "Internal Installation" or "Internally Install" means installing into production Client Applications and/or Server Applications on one or more computers within Ordering Activity's company or organization only in connection with Ordering Activity's internal business purposes.

- 6.2.2.3 “Distribution” or “Distribute” means selling, leasing, licensing or redistributing Client Applications and/or Server Applications to third party end users external to Ordering Activity’s company or organization.
- 6.2.2.4 “Runtime Product” means the version specific files and application program interfaces (APIs) specified in the RUNTIME.TXT file provided with SAP Crystal Reports 2008, SAP Crystal Reports for Eclipse 2.0, and SAP Crystal Reports for Visual Studio 2010.
- 6.2.2.5 “Server Application” means an application developed by Ordering Activity that a) utilizes the Runtime Product, b) allows more than one user to access the Runtime Product either directly or indirectly through any middle tier application(s), and c) adds significant and primary functionality to the Runtime Product. A Client Application installed in a Windows terminal server environment (e.g. Citrix or Microsoft Remote Desktop Platform) is a Server Application.
- 6.2.3 Usage. Ordering Activity may install and Use a single copy of the Runtime Product to develop Client Applications and Server Applications. The Distribution and Internal Installation terms and conditions differ based on the type of applications Ordering Activity develops, as described in the following sections.
- 6.2.4 Internal Installation of Client Applications and Server Applications. Licensor grants Ordering Activity a personal, nonexclusive, limited license to Internally Install the Runtime Product with Client Applications and Server Applications.
- 6.2.5 Distribution of Client Applications. Subject to Ordering Activity’s compliance with all of the terms herein, including without limitation section 6.2.7, Licensor grants Ordering Activity a personal, nonexclusive, limited license to Distribute Client Applications.
- 6.2.6 Distribution of Server Applications. Subject to Ordering Activity’s compliance with all of the terms herein, including without limitation section 6.2.7, Licensor grants Ordering Activity a personal, nonexclusive limited license to Distribute Server Applications to third parties provided that either a) Ordering Activity has acquired a licensed copy of Crystal Reports for each Deployment of a Server Application that is Distributed, and the version of the Runtime Product utilized by such Server Application is the same version as Ordering Activity’s licensed copy of Crystal Reports or b) Ordering Activity owns at least one licensed copy of the SAP Crystal Reports runtime server license.
- 6.2.7 Runtime Product Distribution Requirements.
If Ordering Activity distributes the Runtime Product to third parties pursuant to sections 6.2.5 or 6.2.6, Ordering Activity shall comply with the following requirements:
(a) Ordering Activity remains solely responsible for support, service, upgrades, and technical or other assistance, required or requested by anyone receiving such Runtime Product copies or sample applications;
(b) Ordering Activity does not use the name, logo, or trademark of Licensor, or the Software, without prior written permission from SAP;
Ordering Activity
(c) Ordering Activity shall not distribute the Runtime Product with any general-purpose report writing, data analysis or report delivery product or any other product that performs the same or similar functions as SAP’s product offerings; and
(d) Ordering Activity shall secure the end user’s (“End User”) consent to terms substantially similar to the following:
End User agrees not to modify, disassemble, decompile, translate, adapt or reverse-engineer the Runtime Product or the report file (.RPT) format;
End User agrees not to distribute the Runtime Product to any third party or use the Runtime Product on a rental or timesharing basis or to operate a service bureau facility for the benefit of third-parties;
End User agrees not to use the Runtime Product to create for distribution a product that is generally competitive with SAP’s product offerings;
End User agrees not to use the Runtime Product to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of SAP;
- 6.3 SAP Crystal Dashboard Design, departmental edition.
- 6.3.1 Usage. Self Contained Presentations created with the departmental edition of SAP Crystal Dashboard Design may be freely redistributed.
SWF files generated by the departmental edition that access data exclusively with the Crystal Reports connector can be embedded into a Crystal Report and the resulting report can be redistributed without any additional licensing requirements.
- 6.3.2 Viewing License. If you refresh, publish, push or otherwise change data contained in any SWF file generated by the departmental edition (or SWF file exported to other supported file formats such as PDF, AIR, PPT), you must acquire SAP Crystal Dashboard Viewing option for each named user that can view the SWF. This option is included with and matches the Named User Licenses (“NUL”) of SAP Crystal Reports Server and SAP Crystal Server. One named user license of the Dashboard Viewing option is included with the departmental edition license.
- 6.3.3 Restrictions. SWF files generated by the departmental edition:
- Cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.
 - Can be deployed standalone only to SAP Crystal Reports Server or SAP Crystal Server.
 - Cannot access any data sources from SAP Software, with the exception of SAP BusinessOne.
 - Cannot be distributed to more than 100 end users.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

- 6.4 SAP Crystal Dashboard Design, personal edition

6.4.1 Usage. Self Contained Presentations created with the personal edition of SAP Crystal Dashboard Design may be freely redistributed. SWF files created by the personal edition of SAP Crystal Dashboard Design that access data exclusively with the Crystal Reports connector can be embedded into a Crystal Report and the resulting report can be redistributed without requiring additional licensing.

6.4.2 Restrictions. SWF files generated by the personal edition:

- Cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.
- Can be deployed standalone only to SAP Crystal Reports Server, or SAP Crystal Server.
- Cannot access any data sources from SAP Software, with the exception of SAP BusinessOne.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

6.5 SAP Crystal Presentation Design

6.5.1 Usage. Self Contained Presentations created with all editions of SAP Crystal Presentation Design may be freely redistributed. Ordering Activities of the enterprise edition of SAP Crystal Presentation Design can deploy the Software to any number of employees and contractors, provided those employees and contractors are directly employed by the Ordering Activity. This license does not extend beyond Ordering Activity's corporate entity and excludes all subsidiaries or affiliates of the Ordering Activity.

6.5.2 Restrictions. The student edition of SAP Crystal Presentation Design may only be Used by full time or part time students of a secondary or post-secondary educational institution.

6.6 SAP Crystal Server

6.6.1 Scope. This section applies to SAP Crystal Reports Server and SAP Crystal Server. Throughout this section, the term 'SAP Crystal Server' shall be defined to include both products.

6.6.2 Usage. SAP Crystal Reports which contain SWF files created by either the personal or departmental edition of SAP Crystal Dashboard Design that access data exclusively with the Crystal Reports connector can be viewed by users with either NUL or CAL licenses.

6.6.3 Restrictions. For each Deployment, SAP Crystal Server may be installed and Used only on a single Server. Ordering Activity may not attempt to cluster the system across multiple live Servers. Ordering Activity cannot use SAP Crystal Server to access data in SAP applications with the exception of SAP Business One. Ordering Activity shall not make any single dashboard available to more than 100 named users, nor to users covered under a CAL license.

The following software features and functions can only be accessed using NUL licenses:

- Dashboard viewing through the InfoView or BI Launchpad portal,
- Dashboard viewing through any portal integration kit.
- Dashboard Builder
- BI Workspace
- SAP BusinessObjects Explorer (SAP Crystal Server 2011 and later only)

The following integration kits are not licensed for Use with SAP Crystal Server:

- SAP BusinessObjects Integration for PeopleSoft Enterprise
- SAP BusinessObjects Integration for JDE EnterpriseOne
- SAP BusinessObjects Integration for Siebel
- SAP BusinessObjects Integration for Oracle E-Business Suite
- SAP BusinessObjects Integration for SAP

6.7 Xcelsius Engage Server

6.7.1 Usage. Self Contained Presentations created with Xcelsius Engage Server may be freely redistributed. A connected presentation that receives its data exclusively from the Crystal Reports connector, and is embedded into a Crystal Report is considered a self-contained presentation.

6.7.2 Restrictions. SWF files generated by Xcelsius Engage Server cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

7. Third Party Products

7.1 Address Directories. Following are additional license conditions for content for data quality and data services products ("Address Directories")

7.1.1

- Address Directories, any related documentation and any intellectual property rights therein at all times remain the property of SAP and its third party suppliers (as the case may be);

- Ordering Activities are not permitted to resell the data. Address Directories shall not be used within a service bureau environment. In selected cases, the use by an affiliate will require a separate license (see all specific directory restrictions in the "Pass Through Terms for Address Directories" attached hereto as Exhibit 5 which constitute a part of the terms and conditions of Ordering Activity's use of such Address Directories).
- Address Directories may only be used together with the SAP Data Quality and/or Data Services Products; a perpetual license for the SAP Data Quality and Data Services Products is a prerequisite for using Address Directories;
- Address Directories may not be used for creating a mailing list, database or other derivative work, [but may be used to cleanse an existing mailing list or database of an End User](#);
- Address Directories will be updated from time to time: only the current version of an Address Directory may be used;
- SAP may use a software utility mechanism in Address Directories that imposes time limitations to prevent the use of outdated Address Directories;
- SAP's third party suppliers shall have no liability to End User or any third party as a result of End User's use of the Address Directories or any services you receive related to the use of the Address Directories;
- A third-party supplier for Address Directories may elect to terminate SAP's right to distribute Address Directories or to provide updates during the term of your subscription, in which case Ordering Activity's sole remedy will be to receive a refund of fees for the portion of the subscription for which Ordering Activity is unable to use such Address Directories, unless otherwise stated in the Pass-Through Terms.

7.1.2 Licensing Information

- Address Directories are sold on a subscription model basis, therefore no annual maintenance fee is to be charged and, except to the extent the Address Directories content source makes content updates available to SAP, no SAP maintenance or support is provided for these products.
- The Initial Term of this shall be 12 (twelve) calendar months from the Effective Date of the "Initial Term".
- Automatic renewals occur on an annual basis, subject to availability of the licensed Address Directory on the current SAP List of Prices and Conditions, and will be processed and invoiced according to the then current pricing and terms. After the Initial Term, this subscription license may be terminated by either party with 90 days written notice prior to the start of the following Renewal Term. Any termination must be in writing to the affected party and will be effective at the end of the then-current Initial/Renewal Term during which the termination notice is received by SAP.

7.1.3 Geographic Restrictions

- USPS products may only be sold in the US and are not available outside of the US:
- US NATIONAL DIRECTORY PRODUCTS MAY BE SOLD GLOBALLY.
- SPECIALIZED PRODUCTS SUCH AS LACSLINK, SUITELINK, NCOALINK, DPV, USPS DELIVERY SEQUENCE FILE – DSF2 AND RDI MAY ONLY BE SOLD TO US PERSONS OR ENTITIES FOR USE WITHIN THE US.
- THE NCOALINK INTERFACE CAN ONLY BE SOLD TO PERSONS WHO ARE AUTHORIZED BY THE USPS TO PURCHASE NCOALINK DATA. (NOTE: WE ONLY SELL THE NCOALINK INTERFACE AND CUSTOMERS MUST OBTAIN THE NCOALINK DATA DIRECTLY FROM THE USPS AND MUST BE CERTIFIED TO PURCHASE SUCH DATA BY THE USPS.)

7.1.4 USPS Certified Address Directory Option for DPV and Lacslink. In the event Ordering Activity activates the locking features of the Software and wishes to unlock such features, Ordering Activity agrees to provide certain information relating to the list owner, locking record details and the origin of the locking record including but not limited to the type of list, owner of list if rented and other tracking information as requested by the Licensor or the USPS.

7.1.5 In no event shall Contractor's total liability for damages of any kind or nature in any way arising from or related to the licensed Address Directories exceed an amount equal to the annual Subscription Fee paid in the twelve (12) month period prior to the date of the claim.

7.2 Databases

DB2 for Linux, Unix and Windows:

Enterprise Edition Database partitioning, Storage Optimization included

Oracle DB:

Enterprise Edition, Oracle Objects Option, Partitioning, Intermedia, Oracle Advanced Security Option, Oracle Advanced Compression Option, Standard Management Pack, DBA Management Pack, Diagnostic Pack, Tuning Pack, Provisioning Pack and Change Management Pack. For details and possible limitations regarding the support of the licensed options please see SAP support notes.

Oracle Extended Package

Real Application Cluster (RAC), Database Vault

DB2 for z/OS:

DB2 for z/OS and S/390, IBM DB2 Operational Utilities for z/OS, IBM DB2 Diagnostic and Recovery Utilities for z/OS, IBM DB2 Connect Enterprise Edition. Upgrade options for customers having licensed DB2 for OS/390 before October 1, 2003 are available upon request.

Microsoft SQL Server:

Enterprise Edition

7.3 SAP Test Acceleration and Optimization. SAP Test Acceleration and Optimization requires a license of HP Quality Center including the modules Business Process Testing and QuickTest Professional. This can be licensed from HP directly or by licensing "SAP Quality Center by HP" (material number 7010568).

7.4 Supplementary Products

7.4.1 SAP Interactive Forms by Adobe, Enable the Enterprise (includes 40 Interactive Forms) ("Adobe EE"). The total number of SAP Named Users licensed to Use SAP Software may never exceed the License Level for Adobe EE, i.e. all licensed SAP Named Users must contribute to the calculation of the license fee for Adobe EE.

- 7.4.2 Additional Interactive Forms Bundle(s) for Adobe EE or Adobe, Individual User ("Adobe EE and IU") (40 Forms per Additional Interactive Forms Bundle). Only individuals licensed to Use Adobe EE or IU are permitted to Use the licensed Additional Interactive Forms Bundles for Adobe EE or IU (if any).
- 7.4.3 SAP Interactive Forms by Adobe, External Users ("Adobe EU"). Only those individuals who are licensed to Use specific SAP Software without the requirement of an SAP Named User license may Use licensed Adobe EU, and such Use (of Adobe EU) shall be solely in conjunction with, and to the extent of, such individual's license to Use such specific SAP Software without the requirement of an SAP Named User license. For avoidance of doubt, no one licensed as an SAP Named User may Use Adobe EU. External users get access to 40 forms or the number of forms licensed for Adobe EE/ Adobe IU if greater than 40.
- 7.4.4 SAP Information Interchange by Crossgate ("IIC") and Web Based Connectivity Option ("WBC"). A valid license of IIC is a prerequisite for licensing and Using WBC. WBC has to be licensed in accordance with the minimum quantities stated in the price list and require IIC licenses as a prerequisite. Notwithstanding where IIC, or ICC with WBC, is licensed with a runtime database pursuant to an Order Form, a separate MySQL database is still required (in addition to the licensed runtime database) as follows: (i) the Crossgate software licensed hereunder currently requires a MySQL database product, which is a third party product which has either been integrated or pre-installed as part of the Crossgate software, or which must be installed to Use the Crossgate software; (ii) if integrated in the licensed Crossgate software, the integrated MySQL database product functionality may differ from that of a non-integrated MySQL database product; (iii) this Attachment does not contain a license to use the MySQL database, even where integrated or pre-installed as part of the licensed Crossgate software; (iv) the MySQL database product is subject to its respective vendor license agreement; (v) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained from a third party by Ordering Activity; and (vi) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party supplier, and SAP has no responsibility in this regard.
- 7.4.5 SAP LoadRunner by HP ("LR"). Ordering Activity's Use of the LR software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) only in quality assurance and similar non-production environments, and may only be Used on a single server.
- 7.4.6 SAP LoadRunner by HP, Performance Center with Diagnostics ("LR PCD"). Ordering Activity's Use of the LR PCD software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the LR PCD software Documentation specifies that the licensed LR PCD software is prescribed for testing and monitoring such other pre-production software) only in quality assurance and similar non-production environments. Use of the Diagnostics for Composite Applications component ("Diagnostics") included with LR PCD is (i) subject to the forgoing Usage limitation and (ii) further limited to Use with a single Application Instance (as defined below) for every two hundred fifty (250) Virtual Users of LR PCD licensed. "Application Instance" means a monitored, non-production environment running an instance of an application (e.g. an instance of SAP Software, a java virtual machine or a database server counts as one Application Instance).
- 7.4.7 SAP LoadRunner by HP, Performance Center without Diagnostics ("LR PC"). Ordering Activity's Use of the LR PC software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the LR PC software Documentation specifies that the licensed LR PC software is prescribed for testing and monitoring such other pre-production software) only in quality assurance and similar non-production environments.
- 7.4.8 SAP Quality Center by HP, Enterprise Edition ("QC EE"). Ordering Activity's Use of the QC EE software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc), and, if the applicable Order Form indicates that QC EE is licensed for "Full Use", Ordering Activity's Use of the QC EE software shall also include the right to test or monitor any other pre-production software (so long as the QC EE software Documentation specifies that the licensed QC EE software is prescribed for testing and monitoring such other pre-production software), all in quality assurance and similar non-production environments only. The QC EE Bundle currently includes the SAP Quality Center by HP, Enterprise Edition – QuickTest Professional, TestDirector, Business Process Testing, Requirements Management, and Defects Management components.
- 7.4.9 SAP Quality Center by HP, Premier Edition ("QC PE"). Ordering Activity's Use of the QC PE software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the QC PE software Documentation specifies that the licensed QC PE software is prescribed for testing and monitoring such other pre-production software), all in quality assurance and similar non-production environments only. The QC PE Bundle currently includes the SAP Quality Center by HP, Premier Edition – QuickTest Professional, TestDirector, Business Process Testing, Requirements Management, and Defects Management components.
- 7.4.10 SAP Regulatory Report by iBS, Accounts; SAP Regulatory Report by iBS, Derivatives; SAP Regulatory Report by iBS, P/C/S Cashflow; SAP Regulatory Report by iBS, Retail Cashflow. Licensed iBS software may only be Used to support Ordering Activity's German, Austrian and/or Swiss business operations.
- 7.4.11 Metadata Management Multi-Source Integrators by MITI (CPU). The total number of CPUs of SAP BusinessObjects Metadata Management (CPU) licensed under appendices to this Attachment may never exceed the License Level for the MITI Software licensed above.
- 7.4.12 SAP Employee File Management by OpenText ("EFM"). An individual licensed to Use EFM must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User. EFM contains a limited use license of SAP Document Access by OpenText that

can only be used in conjunction with the EFM solution to manage employee related documents. Broader usage of Document Access would require separate licensing of that solution.

- 7.4.13 SAP Digital Asset Management by OpenText ("xECM"). An individual licensed to Use DAM must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User.
- 7.4.14 SAP Extended ECM by OpenText ("xECM"). An individual licensed to Use xECM must be licensed (under separate Order Form to the Schedule Contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User.
- 7.4.15 SAP Document Access by OpenText ("DA") and **SAP Document Access by OpenText for POS Device ("DA for POS")**. An individual licensed to Use DA for SAP Business Expert, Professional and Limited Professional Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User. An individual licensed to Use DA for SAP Business Information, Employee and Employee Self-Service Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Information, Employee or Employee Self-Service User. DA may not be Used to archive and/or view any data and/or documents originating from a point-of-sale device. DA for POS may only be Used by individuals licensed as SAP Named Users (under separate Order Form to the Schedule contract, and in accordance with each individual's respective SAP Named User type) to archive and/or view data and/or documents originating from a point-of-sale device. .
- 7.4.16 SAP Archiving by OpenText ("Archiving"). An individual licensed to Use Archiving for SAP Business Expert, Professional and Limited Professional Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User. An individual licensed to Use Archiving for SAP Business Information, Employee and Employee Self-Service Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Information, Employee or Employee Self-Service User.
- 7.4.17 SAP Invoice Management by OpenText ("IM"). An individual licensed to Use OCR must also be licensed for IM. The OCR is an optional component and there must be at least as many IM licenses as OCR licenses but there can be more IM licenses than OCR license.
- 7.4.18 SAP Dispatching & Planning – Long Term Planning by Prologa; SAP Dispatching & Planning – Operational Planning by Prologa; SAP Legal Requirements by Prologa. An individual licensed to Use any Prologa must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User.
- 7.4.19 SAP Central Process Scheduling by Redwood. The license for each process server includes the right to Use the Redwood Software on one each of the following systems: (1) a training system, (2) a test / QA system and (3) a backup / failover system for such process server.
- 7.4.20 SAP User Experience Management by Knoa and SAP User Experience Management by Knoa, version for SAP GUI. SAP User Experience Management by Knoa and SAP User Experience Management by Knoa, version for SAP GUI (collectively, "Knoa") may be embedded or bundled with the following SAP Business Objects Software: SAP Business Objects Enterprise Premium, WebIntelligence, Xcelsius Enterprise, Xcelsius Enterprise Interactive Viewing ("Runtime Software"). Such Runtime Software may only be Used to access data created or enhanced by Knoa. Runtime Software may not be combined in the same Deployment as SAP BusinessObjects Software licensed independently from Knoa.
- 7.4.21 BSI U.S. Payroll Tax Processing. The BSI software is licensed for Use in conjunction with the payroll functionality contained in the SAP Payroll Software, which must be separately licensed. In addition, the license for the BSI software is limited for Use on a single Platform at a time (with the exception of a Platform migration period as BSI may allow). For purposes herein, the term "Platform" shall mean a single BSI Supported Configuration of the following: a single database, single server, single client software, and single operating system. For purposes herein, "BSI Supported Configuration" shall mean a configuration for which BSI makes support available for SAP Ordering Activities of the BSI software. The BSI software license does not include a license to use any third party database, server, client software, or operating system. If Ordering Activity wishes to change the Platform: (i) Ordering Activity shall provide SAP written notice of the same and complete a Platform Change form (in a format acceptable to BSI); and (ii) SAP shall allow such change to the extent and under the conditions BSI generally makes available to SAP, including without limitation Ordering Activity's payment of any platform change fees that apply.
- 7.4.22 Additional Third Party Product Terms Applicable to Standalone Use:
 - 7.4.22.1 Metadata Management Multi-Source Integrators by MITI (CPU). SAP BusinessObjects Metadata Management ("BMM") must be separately licensed by Ordering Activity for Standalone Use, and the total number of BMM CPUs licensed by Ordering Activity may never exceed the License Level for the MITI Software licensed above.
 - 7.4.23 SAP Solution Extension Limited User. The SAP Solution Extension Limited User is solely authorized to Use one (1) third party solution licensed by SAP. The License Agreement needs to expressly specify this third party solution. The SAP Solution Extension Limited User applies to SAV if the assigned third party solution does.
 - 7.4.24 RWD
 - For the following price list items the special term as described below does apply:
 - SAP Productivity Pak by RWD – excl. North America (7009560)
 - SAP Productivity Pak Help Launch Pad by RWD – excl. North America (7009561)
 - SAP Productivity Composer by RWD – excl. North America (7009562)
 - SAP Productivity Composer Help Launch Pad by RWD – excl. North America (7009563)
 - SAP Productivity Pak by RWD – North America (7009639)
 - SAP Productivity Pak Help Launch Pad by RWD – North America (7009640)

SAP Productivity Composer by RWD – North America (7009641)
SAP Productivity Composer Help Launch Pad by RWD – North America (7009642)

When RWD software is used with standalone SAP BusinessObjects solutions namely Knowledge Accelerator products or to create education offerings for SAP BusinessObjects solutions that do not interface with SAP solutions that require SAP Named Users, such users must be licensed to use SAP BusinessObjects solutions based on either the SAP BusinessObjects Named User or CPU metric and do not need to be licensed as SAP Named User.

The amount of licensed “user” sales units for the SAP Productivity Pak by RWD or SAP Productivity Composer by RWD must match at least the total number of the licensed Named Users for the SAP BusinessObjects Knowledge Accelerator solutions, provided the SAP BusinessObjects Knowledge Accelerator is licensed along with the RWD solutions. SAP BusinessObjects Knowledge Accelerator may be licensed in the Named User or CPU capacity.

- 7.4.25 SAP Extended Enterprise Content Management by OpenText. SAP Application Named users are applicable. SAP Solution Extension Limited User can be licensed if qualified.
- 7.4.26 SAP Multiresource Scheduling, SAP Multiresource Scheduling with Optimizer, SAP Public Budget Formulation, SAP Intercompany Data Exchange for German Metering, SAP Payment Engine, SAP Pricing and Costing for Utilities, SAP Connector to eAgent, SAP Business Process Tracking for Utilities, SAP Application Interface Framework. Special terms & conditions apply. Details on language availability, technical prerequisites to install and to use these SAP Applications, support periods and further terms & conditions can be found at <http://service.sap.com/fbs/availability>.
- 7.4.27 SAP Real-Time Offer Management (Agent-Assisted Channel), SAP Real-Time Offer Management (Self-Service Channel). Special terms & conditions apply. Details on language availability, technical prerequisites to install and to use these SAP Applications, support periods and further terms & conditions can be found at <http://service.sap.com/fbs/availability>.
- 7.4.28 SAP Business Communication Management (BCM), Rapid Deployment Edition
The usage of SAP Business Communication Management application under this license is restricted to as follows:
Inbound Contact Center is permitted; no Outbound Contact Center and no Enterprise Telephony.
Contact channels are limited to the Voice channel only and without Call-back channel while Software-based Interactive Voice Response (IVR) is limit to 1 port per 2 agents
The Use of the following agent tools are not permitted: IP-desk-phone, Integration to MS Outlook, Switchboard operator tools, Server side recording, Contact Classification Tools, Task Management, Auto Manual Task creation, Task Classification, Task Alarm, monitoring and reporting, Messenger Tools and Outbound dialler softphone.
A Maximum of one supervisor per five agents is allowed, The Use of the following supervisor tools is not permitted: Chat with Agents, Message broadcasting and outbound campaign management.
The Use of the following Contact Routing and IVR Tools is not permitted: Skills-based routing, Preferred/last served agent routing, Personal queues, Email routing based on key words and Least cost-based routing.
The Use of Task Handling reports are not permitted.
The usage of Mobile Communication Mobile Client (CMC) is not permitted.
- 7.4.29 SAP CRM Rapid Deployment Edition. Ordering Activity's Use of SAP CRM Rapid Deployment Edition is limited to accessing the following functionality within SAP CRM: Segmentation & List Management, Lead Management, Opportunity Management, Sales Performance Management, Customer Service & Support, Campaign Management and Accounts and Contact Management. Ordering Activity's Use of the functionality specified herein is limited solely to accessing SAP CRM components. Ordering Activity is entitled to Use SAP NetWeaver Mobile Gateway but only to the extent such Use is required to access the functionality specified herein. Use of other mobile applications may require additional license fees.
- 7.4.30 SAP SRM Rapid Deployment Edition. The SAP SRM Rapid Deployment Edition is based on the SAP SRM application. The SAP SRM Rapid Deployment Edition package enhances the Enterprise Foundation Package by Strategic Sourcing with Request for Quotation. The SAP SRM Rapid Deployment Edition has to be installed as an Add-on in an ERP system using the classic technical scenario.
- 7.4.31 SAP Information Interchange by Crossgate. SAP Information Interchange by Crossgate requires a MySQL database, which needs to be licensed directly from the respective vendor.
- 7.4.32 SAP Interactive Forms by Adobe, external users. External users get access to 40 forms or the number of forms licensed for Enable the License/Individual user if greater than 40.
- 7.4.33 SAP Workforce Scheduling & Optimization by ClickSoftware - Realtime Service. The bundle provides out of the box integration with Pitney Bowes Business Insight-MapInfo, PTV and Microsoft Bing. Each map provider requires a valid license, which needs to be purchased separately. Additional custom integrations with other mapping providers (e.g. ESRI) are possible.
- 7.4.34 SAP BusinessObjects Predictive Workbench by IBM (PW). PW may only be Used with SAP Software, which must be licensed separately by Ordering Activity. All output from PW is restricted to distribution and Use within PW (or export sources provided within PW) and/or Ordering Activity's licensed SAP Software. Notwithstanding anything to the contrary, for every three (3) users of PW licensed, Ordering Activity shall have the right to deploy the PW server components on one (1) CPU. PW may only be installed, deployed and/or hosted at a Ordering Activity or an authorized Affiliate's facility.
- 7.4.35 SAP Object Event Repository. SAP Object Event Repository includes use-rights of Auto-ID Infrastructure (AII) capabilities; however those capabilities can only be used in conjunction with SAP Object Event Repository. Stand-alone use based on this license is not allowed

8. SYBASE Portfolio Products.

- 8.1 Sybase Product Specific Terms / Use Rules
The Sybase Software licensed hereunder may include certain third party open source and/or other free download components (collectively, the "Free Download Components"). Please refer to <http://www.sybase.com/thirdpartylegal> for certain notices relating to the Free Download Components.
- 8.2 Package Restrictions for Sybase Products.
- 8.2.1 Sybase Unwired Platform ("SUP"). SUP includes a runtime license of Sybase SQL Anywhere, Mobilink, and Ultralite.. These runtime products can be Used solely in conjunction with the Usage of SUP.
- 8.2.2 SUP Additional Application Connections. Additional Application Connections may only be Used by individuals who are also licensed as SUP Users. Each additional Application Connection licensed shall be added to the aggregate total of Application Connections that may be made by individuals who are also licensed as SUP Users.
- 8.2.3 Sybase Afaria Handheld Device Management from SAP (Afaria HDM) and/or Sybase Unwired Platform (SUP) & Afaria Handheld Device Management from SAP (Afaria HDM)
- 8.2.3.1 Afaria HDM license includes the following components, for Use solely on or with handheld devices: Afaria Enterprise Server including Multi-tenancy, Afaria Channel Test/Dev Server, Afaria Session Mgr for Handheld Devices, Afaria Software Mgr for Handheld Devices, Afaria Document Mgr for Handheld Devices, Afaria Security Mgr for Handheld Devices, Afaria Configuration Mgr for Handheld Devices, Afaria Inventory Mgr for Handheld Devices, Afaria OMA DM Client for Handheld Devices, and Afaria Backup Manager for Handheld Devices.
- 8.2.3.2 Use of each non-productive, test and development installation of Afaria HDM shall not exceed ten (10) Afaria HDM Users or ten (10) SUP & Afaria HDM Users. However, there is not a limit on the number of test and development installations provided the number of licensed Afaria HDM Users or SUP & Afaria HDM Users (as applicable) is not exceeded.
- 8.2.3.3 Afaria HDM Users. Any individual Using Afaria HDM must be licensed (i) as an Afaria HDM User or SUP & Afaria HDM Users and (ii) also as an SAP Named User (under separate Order Form to the Schedule contract), and such individual's Use of Afaria HDM shall be subject to such individual's SAP Named User type and the applicable License Level for Afaria HDM or SUP & Afaria HDM.
- 8.2.4 Sybase Afaria Laptop Management from SAP (Afaria LM)
- 8.2.4.1 Afaria LM license includes the following components, for Use solely on or with laptops: Afaria Enterprise Server including Multi-tenancy, Afaria Channel Test/Dev Server, Afaria Session Mgr for Laptop Management, Afaria Document Mgr for Laptop Management, Afaria Software Mgr for Laptop Management, Afaria Backup Mgr for Laptop Management, and Afaria Patch Mgr for Laptop Management.
- 8.2.4.2 Use of each non-productive, test and development installation of Afaria LM shall not exceed ten (10) Afaria LM Users. However, there is not a limit on the number of test and development installations provided the number of licensed Afaria LM Users is not exceeded.
- 8.2.4.3 Afaria LM Users. Any individual Using Afaria LM must be licensed (i) as an Afaria LM User and (ii) also as an SAP Named User (under separate Order Form to the Schedule contract), and such individual's Use of Afaria LM shall be subject to such individual's SAP Named User type and the Afaria LM License Level.
- 8.2.5 Advanced Security Option; Unstructured Data Analytics Option; Multiplex Grid Option; Very Large Database Management Option (VLDB)
Advanced Security Option; Unstructured Data Analytics Option; Multiplex Grid Option; Very Large Database Management Option (VLDB) requires the licensing of Sybase IQ Enterprise Edition.
- 8.2.6 Sybase ASE. Sybase Adaptive Server Enterprise ("ASE") is a runtime database licensed for use by individuals licensed as SAP Named Users solely in conjunction with their use of applicable Software and/or Third Party Software licensed by Ordering Activity from SAP. The Sybase ASE runtime database may not be used to run any software and/or third party software other than applicable Software and/or Third Party Software licensed by Ordering Activity from SAP. For purposes of clarification, see the applicable Software and/or Third Party Software Documentation for information regarding release(s) / version(s) supported on the Sybase ASE runtime database.
- 8.2.7 DB2 Runtime Database in Certain Sybase Licensing Scenarios. Notwithstanding anything to the contrary, the Afaria HDM and Afaria LM Software, if licensed hereunder, may require a database product in addition to any runtime database that may be licensed hereunder. The Attachment does not contain a license to use any database product other than one identified in the Attachment. SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained (i.e. licensed) directly from a third party vendor by Ordering Activity, and Ordering Activity is responsible for support and maintenance of any database product obtained (i.e. licensed) from a third party vendor, and SAP has no responsibility in this regard.
- 8.2.8 SAP Enterprise Integrations for Mobile Apps Software.
- 8.2.8.1 The SAP Enterprise Integration for Mobile Apps Software may require an additional component downloaded from a third party mobile application store. Each additional component is subject to its respective license agreement. In addition, the following terms apply to specific Software:

- 8.2.8.2 SAP Enterprise Integrations for Mobile Apps. For the SAP Enterprise Integration Mobile Apps listed below, in addition to fulfilling the underlying SAP Named User license requirement, access to the licensed Enterprise Integrations for Mobile Apps requires one of the following (i) an SAP NetWeaver Gateway license and SUP User license; (ii) an SAP NetWeaver Gateway license and an SUP & Afaria HDM User license; or (iii) SAP Mobile Platform User license.

SAP Enterprise Integration for ERP Quality Issue Mobile App

SAP Enterprise Integration for Employee Lookup Mobile App

SAP Enterprise Integration for Leave Request Mobile App

SAP Enterprise Integration for Travel Receipt Capture Mobile App

SAP Enterprise Integration for Travel Expense Approval Mobile App

SAP Enterprise Integration for HR Approvals Mobile App

SAP Enterprise Integration for Cart Approval Mobile App

SAP Enterprise Integration for Timesheet Mobile App

SAP Enterprise Integration for Sales Order Notification Mobile App

SAP Enterprise Integration for Customer and Contacts Mobile App

SAP Enterprise Integration for Material Availability Mobile App

SAP Enterprise Integration for ERP Order Status Mobile App

SAP Enterprise Integration for GRC Access Approver Mobile App

SAP Enterprise Integration for GRC Policy Survey Mobile App

SAP Enterprise Integration for Payment Approvals Mobile App

SAP Enterprise Integration for Customer Financial Fact Sheet Mobile App

SAP Enterprise Integration for Interview Assistant Mobile App

SAP Enterprise Integration for Transport Notification and Status Mobile App

SAP Enterprise Integration for Transport Tendering Mobile App

SAP Enterprise Integration for Manager Insight Mobile App

SAP Enterprise Integration for Electronic Medical Record on iPad Mobile App

- 8.2.8.3 Sybase Mobile Workflow Enterprise Integration for SAP, Sybase Mobile Sales Enterprise Integration for SAP CRM, SAP Enterprise Integration for Retail Execution Mobile App, SAP Enterprise Integration for Field Service Mobile App, SAP Enterprise Integration for EAM Work Order Mobile App. The referenced Enterprise Integrations for Mobile Apps include a runtime license of SAP NetWeaver Mobile Gateway and Use of such runtime product is limited solely to enable Ordering Activity's Usage of the licensed Enterprise Integrations for Mobile App. In addition to fulfilling the underlying SAP Named User license requirement, each Enterprise Integration Mobile App User must also be licensed as an SUP User, an SUP & Afaria HDM User or SAP Mobile Platform User.

- 8.2.8.4 SAP Enterprise Integration for Citizen Connect Mobile App. In addition to fulfilling the underlying SAP Named User license requirement, Use of the licensed SAP Enterprise Integration for Citizen Connect Mobile App requires a license of SAP NetWeaver Gateway or SAP Mobile Platform User.

- 8.2.9 SAP Mobile Platform. Each SAP Mobile Platform User license is comprised of one (1) Sybase Unwired Platform (SUP) & Afaria Handheld Device Management from SAP (Afaria HDM) User license. Each component comprising the SAP Mobile Platform is subject to the applicable terms stated in the Software Use Rights document. Each such SAP Mobile Platform User may Use SAP NetWeaver Gateway as follows: each SAP Mobile Platform User is licensed to Use SAP NetWeaver Gateway provided with the SAP Mobile Platform for the sole purpose of enabling (i) any SAP Mobile Applications, as set forth on <http://www.sap.com/mobile>, and licensed by Ordering Activity under this Attachment A on a per user basis, solely to interface with the Software and/or third party software licensed under this Attachment and/or (2) any Ordering Activity owned/licensed mobile applications, solely to interface with the Software and/or third party software licensed under this Attachment via SUP. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license.

- 8.2.10 SAP Mobile Platform for Consumers. Each SAP Mobile Platform for Consumer User license is comprised of Sybase Unwired Platform (SUP) & and SAP Netweaver Gateway. Each component comprising the SAP Mobile Platform for Consumers is subject to the applicable terms stated in the Software Use Rights document. Each such SAP Mobile Platform for Consumer User is licensed to Use SAP NetWeaver Gateway provided with the SAP Mobile Platform for Consumers for the sole purpose of enabling (i) any SAP Mobile Applications, as set forth on <http://www.sap.com/mobile>, and licensed by Ordering Activity under this Attachment A on a per user basis, solely to interface with the Software and/or third party software licensed under this Attachment A and (2) any Ordering Activity owned/licensed mobile applications, solely to interface with the Software and/or third party software licensed under this Attachment A via SUP. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license. Ordering Activity may grant each licensed SAP Mobile Platform for Consumer User the right to make an unlimited number of Application Connections, and there is no requirement for an SAP Mobile Platform for Consumer User to also be licensed as an SAP Named User; and only an individual making Application Connections solely on his or her own behalf as an individual (i.e. not in conjunction with his or her employment or on behalf of any other individual(s) and/or entity(ies)) may be licensed as an SAP Mobile Platform for Consumer User.

- 8.2.11 **SAP Mobile Platform Limited Runtime License.** Ordering Activity is licensed to Use Sybase Unwired Platform and SAP NetWeaver Gateway ("Mobile Platform Runtime Components") with the licensed Software referenced at the web sites below, for the sole purpose of enabling Ordering Activity's usage of such licensed Software via interface with the Mobile Platform Runtime Components:

- (1) SAP Enterprise Integration for SAP Mobile Application; or
- (2) SAP Partner Certified Mobile Application

both as stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option/index.epx> or <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option-for-productivity-apps/index.epx>. Ordering Activity's Use of SAP NetWeaver Gateway as a Mobile Platform Runtime Component is solely via interface to SUP. Ordering Activity must license the necessary Users / Named Users for its Use of the licensed Software in accord with the Software Use Rights document. Each component comprising the Mobile Platform Runtime Components is subject to the applicable terms stated in the Software Use Rights document. In the event Ordering Activity Uses the Mobile Runtime Platform Components other than as specified in this paragraph, a separate full use license is required.

9. SAP HANA

9.1 Definitions.

- 9.1.1 **Data Sources.** Any software product(s) and/or database instance(s) for which Ordering Activity has secured an appropriate license.

- 9.1.2 **Non-SAP Applications.** Any software and/or applications, other than Software or Third Party Software, for which Ordering Activity has secured an appropriate license from an entity other than SAP, SAP AG, and/or any of its/their subsidiaries and/or distributors.

9.2 Where SAP HANA Is Not Contractually Restricted to Standalone Use.

- 9.2.1 **SAP HANA, Platform Edition.** SAP HANA Platform may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level.

- 9.2.2 **SAP HANA, Enterprise Edition.** SAP HANA Enterprise may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level. SAP HANA Enterprise currently includes a runtime license of SAP Business Objects Data Integrator ("DI") and SAP System Landscape Transformation ("SLT"), and Use of such runtime products shall be limited solely to extracting data from Data Sources into HANA.

- 9.2.3 **SAP HANA Extended Enterprise.** SAP HANA Extended Enterprise may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level. SAP HANA Extended Enterprise currently includes a runtime license of SAP Business Objects Data Integrator ("DI"), SAP System Landscape Transformation ("SLT"), Sybase Replication Server ("SRS"), Sybase SQL Anywhere database ("SQL") and Sybase Adaptive Server Enterprise ("ASE"), and Use of such runtime products shall be limited solely to (i) in the case of DI, SLT and SRS, extracting data from Data Sources into SAP HANA, (ii) in the case of SQL, serving as the database repository for SRS and (iii) in the case of ASE, serving as the database repository for DI and/or SRS (with respect to SRS, Ordering Activity may elect, in its discretion, to Use ASE rather than SQL). Notwithstanding anything to the contrary, Ordering Activity may not use SRS to directly or indirectly extract data from any Microsoft, Oracle, IBM Informix, IBM DB2 for z/OS, ASE, and/or MaxDB database product.

9.2.4 Named User Requirements Where SAP HANA Software Is Not Contractually Restricted to Standalone Use.

- 9.2.4.1 If an individual is Using licensed SAP HANA Software with a specific application that is licensed Software or Third Party Software and requires an SAP Named User license, then the SAP Named User license granting such individual the right to Use such specific application shall also fulfill the SAP Named User license requirement for Use of the licensed SAP HANA Software solely with such specific application, and such individual's Use of the licensed SAP HANA Software with such specific application shall be in accordance with the respective SAP Named User license.

- 9.2.4.2 If an individual is Using licensed SAP HANA Software with a specific application that is licensed Software or Third Party Software and does not require an SAP Named User license, then Use of the licensed SAP HANA Software solely with such specific application shall not require an SAP Named User license.

- 9.2.4.3 If an individual is Using licensed SAP HANA Software with Non-SAP Applications, then such individual must be licensed as an SAP Application HANA Administrator Use or an SAP Application HANA Viewer User, and such individual's Use of the licensed SAP HANA Software solely with such Non-SAP Applications shall be in accordance with the respective SAP Named User license.

- 9.2.4.4 Notwithstanding the foregoing, an SAP Named User license will not be required solely where (i) data is exported directly out of the licensed SAP HANA Extended Enterprise into Non-SAP Applications in an asynchronous, non-real-time manner and (ii) the use of such exported data in such Non-SAP Applications does not result in any updates to and/or trigger any processing capabilities of any licensed Software or Third Party Software. Notwithstanding anything to the contrary, if a runtime database is licensed for Use with the licensed SAP HANA Extended Enterprise Software, then Use of such runtime database to support the export of data from the licensed SAP HANA Enterprise Software in accordance with the immediately preceding sentence shall be limited to standard APIs provided with such runtime database.

9.3. Where SAP HANA Software Is Contractually Restricted to Standalone Use.

- 9.3.1 Standalone Use of HANA Platform. SAP HANA Platform may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level.
- 9.3.2 Standalone Use of HANA Enterprise. SAP HANA Enterprise may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level. SAP HANA Enterprise currently includes a runtime license of SAP Business Objects Data Integrator ("DI") and SAP System Landscape Transformation ("SLT"), and Standalone Use of such runtime products shall be limited solely to extracting data from Data Sources into HANA.
- 9.3.3 Standalone Use of HANA Extended Enterprise Enterprise. SAP HANA Extended Enterprise may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level. SAP HANA Extended Enterprise currently includes a runtime license of SAP Business Objects Data Integrator ("DI"), SAP System Landscape Transformation ("SLT"), Sybase Replication Server ("SRS"), Sybase SQL Anywhere database ("SQL") and Sybase Adaptive Server Enterprise ("ASE"), and Standalone Use of such runtime products shall be limited solely to (i) in the case of DI, SLT and SRS, extracting data from Data Sources into SAP HANA, (ii) in the case of SQL, serving as the database repository for SRS and (iii) in the case of ASE, serving as the database repository for DI and/or SRS (with respect to SRS, Ordering Activity may elect, in its discretion, to Use ASE rather than SQL). Notwithstanding anything to the contrary, Ordering Activity may not use SRS to directly or indirectly extract data from any Microsoft, Oracle, IBM Informix, IBM DB2 for z/OS, ASE, and/or MaxDB database product.
- 9.4 Named User Requirements Where SAP HANA Software Is Contractually Restricted to Standalone Use
- 9.4.1 If an individual is Using licensed SAP HANA Software that is contractually restricted to Standalone Use with a specific application that is licensed Software or Third Party Software (also contractually restricted for Standalone Use) and requires an SAP Named User license, then the SAP Named User license granting such individual the right to Use such specific application shall also fulfill the SAP Named User license requirement for Use of the licensed SAP HANA Software solely with such specific application, and such individual's Use of the licensed SAP HANA Software with such specific application shall be in accordance with the respective SAP Named User license.
- 9.4.2 If an individual is Using licensed SAP HANA Software that is contractually restricted to Standalone Use with (i) a specific application that is licensed Software or Third Party Software (also contractually restricted for Standalone Use) and does not require an SAP Named User license and/or (ii) Non-SAP Applications (subject to the contractual Standalone Use restriction), then such individual must be licensed as an SAP Application Standalone HANA Administrator User or an SAP Application Standalone HANA Viewer User, and such individual's Use of the licensed SAP HANA Software solely with such application(s) shall be in accordance with the respective SAP Named User license.
- 9.4.3 Notwithstanding the foregoing, an SAP Named User license will not be required solely where (i) data is exported directly out of the licensed HANA Extended Enterprise Software into Non-SAP Applications in an asynchronous, non-real-time manner and (ii) the use of such exported data in such Non-SAP Applications does not result in any updates to and/or trigger any processing capabilities of any licensed Software or Third Party Software.
- 9.5 SAP HANA DB Edition for SAP NetWeaver BW ("HANA DB for BW"). HANA DB for BW is a database licensed solely to support Ordering Activity's Use of SAP NetWeaver Business Warehouse (SAP BW) and Use is limited to communications between SAP BW and HANA DB for BW. HANA DB for BW may support an unlimited number of data sources (i.e. any software product(s) and/or database instance(s), for which Ordering Activity has secured an appropriate license), subject to the applicable Licensed Level. Any access to HANA DB for BW, including but not limited to data loading, modeling, reporting and distribution, must take place via SAP BW. HANA DB for BW may not be used as a database for any other purpose except as specified in this footnote. HANA DB for BW includes a runtime license of HANA Studio and access is solely to administer and manage HANA DB for BW. HANA DB for BW does not include a license for SAP BW. HANA DB for BW cannot be deployed on the same installation as any other SAP HANA software. The SAP Named User requirements for HANA Software apply to HANA DB for BW.
- 9.6 The Sybase runtime components included with HANA Extended Enterprise licensed hereunder may include certain third party open source and/or other free download components (collectively, the "Free Download Components"). Please refer to <http://www.sybase.com/thirdpartylegal> for certain notices relating to the Free Download Components.
10. Focused Business Solutions.
- 10.1 If licensed Software is identified as a Focused Business Solution ("FBS Software"), special support strategy and conditions apply. SAP Support for FBS Software shall be provided in accordance with the applicable SAP Support terms as amended by the then current support strategy and conditions found at <http://service.sap.com/fbs/availability> (inclusive of any successor site(s) made known by SAP, the "Strategy & Conditions Site").
- 10.2 The Strategy & Conditions Site is hereby amended to include the following terms:
- 10.2.1 FBS Software requires, as a prerequisite to its Use and installation, a specific version (e.g. release, service level pack, and/or enhancement pack) of certain SAP Software (the "Base Software"), which is identified on the Strategy & Conditions Site and must be separately licensed and installed by Ordering Activity.
- 10.2.2 In the future, should SAP elect, in its sole and exclusive discretion, to make new release(s) of FBS Software commercially available as part of SAP Support, such new release(s) may (a) differ functionally, (b) have different supported language(s) and/or (c) have different Base Software requirements from prior FBS Software release(s).
- 10.2.3 Mainstream and extended maintenance dates for FBS Software are targets, and therefore subject to change by SAP.

- 10.2.4 Maintenance and extended maintenance for any FBS Software release is contingent upon Ordering Activity remaining subscribed to, and current on, payment for maintenance for the applicable Base Software.
- 10.2.5 In no event will maintenance or extended maintenance for any FBS Software release be provided following the expiration or termination of mainstream or extended (as applicable) maintenance on the underlying Base Software.

Exhibit 4 - Pass Through Terms for Third Party Databases

SAP may deliver SAP software containing a database product where the end user is not entitled to use the database unless he/she has acquired the requisite number of licenses from the database vendor or its authorized distributor. Such deliveries are reported to the database vendor.

Conditions for the use of ORACLE® Database Software when licensed from SAP

1. Copyright

- 1.1 The comprehensive copyright to Oracle software is the sole property of the Oracle Corporation, Redwood Shores, CA, USA.
- 1.2 Third party database applications for system administration, monitoring and management may directly access the Oracle database.
- 1.3 The customer shall only use the Oracle software in connection with the SAP Software and only for the purposes of its own internal data processing which includes access of third party user such as contractor, supply chain vendor or supplier, customer, or third party individual authorized by the customer. It is allowed to customize the SAP software or to create additional functionality, new applications, or to support third party database applications which only interface with them (example: via RFC, BAPI) Third party database applications or new functionality or new applications which may directly access the Oracle database or indirectly access information contained therein are not allowed.
- 1.4 The customer shall assign the Oracle software only to wholly owned or majority owned subsidiaries. Assignment to competitors of Oracle is prohibited.
- 1.5 In view of its limited rights of use, the customer shall neither modify, decompile nor reverse engineer the Oracle software except and to the extent that it is expressly permitted by applicable law.
- 1.6 The Oracle software may only be used in the country or countries for which the customer has acquired a license. The customer hereby undertakes to adhere to all regulations of the US Department of Commerce and the American export authorities.
- 1.7 The use of Oracle software for the planning, production, control or monitoring of nuclear power stations, air traffic, means of mass transportation or medical equipment is not permitted, unless such use is limited to commercial or purely administrative applications.
- 1.8 The customer is not entitled to receive the source code for the Oracle software.

2. Other Conditions

- 2.1 The publication of benchmark tests for the Oracle software is not permitted.

Conditions for the Use of the Microsoft SQL-Server

Conditions for the Use of the Microsoft SQL-Server when licensed by SAP

For the purpose of this Section "Integrated Application" shall be defined as SAP software integrating the Microsoft SQL Server Database.

The Microsoft SQL Server Database may contain the following software:

"Server Software" provides services or functionality on your server (your computers capable of running the Server Software are "Servers"); "Client Software" allows an electronic device ("Device") to access or utilize the Server Software.

1. GRANT OF LICENSE.

This Third-Party Database is licensed and delivered to you solely for use as part of the SAP software. Contractor, through SAP, grants you the following rights to the Microsoft SQL Server Database, provided you comply with all of the terms and conditions of this license:

Installation -- Server Software. You may install and use one copy of the Server Software, as part of the SAP Software, on each single Server on which you install the Integrated Application.
SQL Server, Enterprise Edition. If you have acquired the Enterprise Edition of the Server Software, which must be indicated on your license to use the SAP software, you may install any number of instances of the Server Software on that Server. An "instance" shall mean a running copy of the Server Software.

Client Software. You may install the Client Software (SQL Server Personal Edition) on any internal Device, provided that you acquire the access license rights required for each use of the Integrated Application utilizing the Client Software on such Device as specified below.

SQL Server Access Requirements. You may use the Client Software only to access, configure, administer, or otherwise use the Server Software in conjunction with and as part of the SAP Software. You must acquire a Third-Party Database access license right for each use of any Device that:

- accesses or otherwise utilizes the services of the Server Software (including Devices using MSDE for such access), or
- installs and uses SQL Server Personal Edition, or

- uses the Management Tools, Books-Online, and Development Tools components of Microsoft SQL Server (collectively "Tools"). You may only use the Tools for internal use in conjunction with your Server Software.

Reservation of Rights. SAP and Microsoft reserve all rights not expressly granted to you in this license.

Benchmark Testing. You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Windows components.

Downgrades. Instead of installing and using the Server Software, you may install and use an earlier version of the Server Software in accordance with this license, provided that you completely remove such earlier version and install the original Server Software within a reasonable time. Your use of such earlier version shall be governed by this license, and your rights to use such earlier version shall terminate when you install the original Server Software.

Runtime-Restricted Use Software. This Microsoft SQL Server Database is "Runtime-Restricted Use" software; as such, the Microsoft SQL Server Database may only be used to run the SAP Application. The Microsoft SQL Server Database may not be used either (i) to develop any new software applications, (ii) in conjunction with any software applications, databases or tables other than those contained in the SAP Software, and/or (iii) as a standalone software application. The foregoing provision, however, does not prohibit you from using a tool to run queries or reports from existing tables, and/or from using a development environment or workbench which is part of the SAP Software to configure or extend such SAP Software.

2. SCOPE OF LICENSE.

The software is licensed, not sold. This agreement only gives you some rights to use the software. SAP and Microsoft reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For more information, see www.microsoft.com/licensing/userights. You may not:

- work around any technical limitations in the software;
- reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy;
- rent, lease or lend the software; or
- use the software for commercial software hosting services.

Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

3. NO HIGH RISK USAGE.

The Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. You may not use the Products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include, but are not limited to:

- aircraft or other modes of human mass transportation,
- nuclear or chemical facilities,
- life support systems,
- implantable medical equipment,
- motor vehicles, or
- weaponry systems.

High Risk Use does not include utilization of Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

4. TRANSFER – Internal.

You may move the Server Software to a different Server, provided that it is removed from the Server from which it is transferred and provided that it is transferred as part of the Integrated Application.

Transfer to Third Party. The initial user of the Microsoft SQL Server Database may make a one-time transfer of the Third-Party Database to another end user, provided that it is transferred as part of the SAP Software. The transfer has to include all component parts, media, printed materials, this license, and if applicable, the Certificate of Authenticity. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Microsoft SQL Server Database must agree to all the license terms.

5. LIMITATION ON REVERSE ENGINEERING, DECOMPIlation, AND DISASSEMBLY.

You may not reverse engineer, decompile, or disassemble the Microsoft SQL Server Database, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

6. TERMINATION.

Without prejudice to any other rights, Licensor may cancel this license if you do not abide by the terms and conditions of this license, in which case you must destroy all copies of the Microsoft SQL Server Database and all of its component parts.

7. EXPORT RESTRICTIONS.

You acknowledge that Software is subject to U.S. export jurisdiction unless otherwise indicated by Microsoft. You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

8. U.S. GOVERNMENT LICENSE RIGHTS.

All Microsoft SQL Server Databases provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Microsoft SQL Server Databases provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

9. COPYRIGHT and OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES

The Microsoft SQL Server Database is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Microsoft SQL Server Database. The Microsoft SQL Server is licensed, not sold.

10. NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. SAP HAS INDEPENDENTLY DETERMINED HOW TO USE THE MS SQL SERVER DATABASE IN THE INTEGRATED APPLICATION THAT IT IS LICENSING TO YOU, AND MICROSOFT HAS RELIED ON SAP TO CONDUCT SUFFICIENT TESTING TO DETERMINE THAT THE MS SQL SERVER DATABASE IS SUITABLE FOR SUCH USE.

11. NO WARRANTIES BY MICROSOFT. YOU AGREE THAT IF YOU HAVE RECEIVED ANY WARRANTIES WITH REGARD TO EITHER (A) THE MS SQL SERVER DATABASE, OR (B) THE INTEGRATED APPLICATION, THEN THOSE WARRANTIES ARE PROVIDED SOLELY BY SAP AND DO NOT ORIGINATE FROM, AND ARE NOT BINDING ON, MICROSOFT.

12. NO LIABILITY OF MICROSOFT FOR CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE MS SQL SERVER DATABASE OR THE INTEGRATED APPLICATION. THIS LIMITATION WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY AMOUNT IN EXCESS OF TWO HUNDRED FIFTY U.S. DOLLARS (US\$250.00).

13. SEVERABILITY. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will continue in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.

Conditions for the Use of the Microsoft SQL-Server when previously licensed by Microsoft or Microsoft Distributor

The SAP software containing a copy of the Microsoft SQL-Server, which has been integrated or installed as a component of this SAP software. All Microsoft products are subject to the terms of the Microsoft License Agreement with end users which is included in the software package or the license agreements shipped with the Microsoft SQL-Server. An exception hereto is that the functionality of a Microsoft product as an integrated part of an SAP solution can differ from the functionality of a non-integrated Microsoft product. All inquiries relating to the functionality or performance of the SAP solution with Microsoft products should therefore be addressed to SAP and not to Microsoft. The SAP product does not contain a license for the integrated Microsoft product. You are therefore not entitled to use the copy of the Microsoft SQL-Server contained in this product and you will not receive a license for such use unless you have acquired or otherwise have at your disposal the same number of client/server licenses as user licenses acquired for the SAP software. By concluding this contract with SAP you represent and warrant that you have previously acquired a Microsoft license for SQL-Server end users and to conclude a corresponding license agreement.

When SAP delivers an updated version of the SAP software containing an updated version of the integrated Microsoft product, the end user is not entitled to use the updated version of the Microsoft product unless he/she has acquired the requisite number of client/server licenses from an authorized Microsoft distributor.

Conditions for Use of Sybase ASE

SAP is licensing Sybase ASE as a runtime license for Software licensed by SAP. A full use license for Sybase ASE is available from Sybase directly.

Ordering Activity shall only use the Sybase ASE in connection with the Software licensed for the Use with Sybase ASE and only for the purposes of its own internal data processing which includes access of third party user such as contractor, supply chain vendor or supplier, customer, or third party individual authorized by the customer. Ordering Activity may not Use Sybase ASE with any non-SAP branded or custom developed applications.

Third party database applications for system administration, monitoring and management may directly access Sybase ASE.

Third party database applications or new functionality or new applications which may directly access the Sybase ASE or indirectly access information contained therein are not allowed.

The foregoing provision, however, does not prohibit you from using a development environment or workbench which is part of the SAP Software to configure or modify the SAP software for which the database is licensed.

Exhibit 5 - Pass Through Terms for Address Directories

1. Reserved.
2. Reserved.
3. Reserved.

4. GERMANY ADDRESS DIRECTORY (DEUTSCHE POST DIREKT):Reserved.

5. GEOCODING FOR US BY NAVTEQ, GEOCODING FOR CANADA BY NAVTEQ, GEOCODING FOR FRANCE BY NAVTEQ

(NAVTEQ):

The data ("Data") is provided for Ordering Activity's internal use only and not for resale. It is protected by copyright, and is subject to the following terms and conditions which are agreed to by you, on the one hand, NAVTEQ and NAVTEQ Suppliers on the other hand.

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Scope of Use. Ordering Activity agrees to use this Data together with SAP Applications solely for your internal business operations purposes for which Ordering Activity was licensed, and not for service bureau, time-sharing or other similar purposes. Accordingly, but subject to the restrictions set forth in the following paragraphs, Ordering Activity may copy this Data only as necessary for Ordering Activity's business use to (i) view it, and (ii) save it, provided that Ordering Activity does not remove any copyright notices that appear and do not modify the Data in any way. Ordering Activity agrees not to otherwise reproduce copy, modify, decompile, disassemble or reverse engineer any portion of this Data, and may not transfer or distribute it in any form except to your affiliates, for any purpose, except to the extent permitted by mandatory laws. Multi-disc sets may only be transferred or sold as a complete set as provided by SAP and not as a subset thereof.

Restrictions. Except where Ordering Activity has been specifically licensed to do so by SAP, and without limiting the preceding paragraph, Ordering Activity may not (a) use this Data with any products, systems, or applications installed or otherwise connected to or in communication with vehicles, capable of vehicle navigation, positioning, dispatch, real time route guidance, fleet management or similar applications; or (b) with or in communication with any positioning devices or any mobile or wireless-connected electronic or computer devices, including without limitation cellular phones, palmtop and handheld computers, pagers, and personal digital assistants or PDAs.

Warning. The Data may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.

No Warranty. This Data is provided to you "as is," and Ordering Activity agrees to use it at its own risk. NAVTEQ and NAVTEQ SUPPLIERS make no guarantees, representations or warranties of any kind, express or implied, arising by law or otherwise, including but not limited to, content, quality, accuracy, completeness, effectiveness, reliability, fitness for a particular purpose, usefulness, use or results to be obtained from this Data, or that the Data or server will be uninterrupted or error-free.

Disclaimer of Warranty: NAVTEQ and NAVTEQ SUPPLIERS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF QUALITY, PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Some States, Territories and Countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to you.

Disclaimer of Liability: NAVTEQ and NAVTEQ SUPPLIERS SHALL NOT BE LIABLE TO YOU: IN RESPECT OF ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ALLEGING ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, WHICH MAY RESULT FROM THE USE OR POSSESSION OF THE INFORMATION; OR FOR ANY LOSS OF PROFIT, REVENUE, CONTRACTS OR SAVINGS, OR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENCEE'S USE OF OR INABILITY TO USE THIS INFORMATION, ANY DEFECT IN THE INFORMATION, OR THE BREACH OF THESE TERMS OR CONDITIONS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF CLIENT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some States, Territories and Countries do not allow certain liability exclusions or damages limitations, so to that extent the above may not apply to Ordering Activity.

Government End Users. If the Data is being acquired by or on behalf of the United States government or any other entity seeking or applying rights similar to those customarily claimed by the United States government, the Data is a "commercial item" as that term is defined at 48 C.F.R. ("FAR") 2.101, is licensed in accordance with these Pass Through Terms, and each copy of Data delivered or otherwise furnished shall be marked and embedded as appropriate with the following "Notice of Use," and shall be treated in accordance with such Notice:

Notice of Use

Contractor (Manufacturer/ Supplier) Name: NAVTEQ

Contractor (Manufacturer/Supplier) Address: 425 W. Randolph Street, Chicago, Illinois 60606

This Data is a commercial item as defined in FAR 2.101 and is subject to these End-User Term under which this Data was provided.

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If Data for additional countries is included or distributed in connection with software products of SAP, or if Ordering Activity uses data from relevant countries the following supplier terms/copyright notices shall be included in the End-User Terms as applicable:

<u>Territory</u>	<u>Notice</u>
Australia (www.pdma.com.au).“	“Copyright. Based on data provided under license from PSMA Australia Limited
Austria	“© Bundesamt für Eich- und Vermessungswesen”
Croatia, Cyprus, Estonia, Latvia, Lithuania, Moldova, Poland, Slovenia and/or Ukraine	“© EuroGeographics”
France	The following notice must appear on all copies of the Data, and may also appear on packaging: “source: © IGN 2009 – BD TOPO ®”
Germany	“Die Grundlegendaten wurden mit Genehmigung der zuständigen Behörden entnommen” or “Die Grundlegendaten wurden mit Genehmigung der zuständigen Behörden entnommen.”
Great Britain	“Based upon Crown Copyright material.”
Greece	“Copyright Geomatics Ltd.”
Hungary	“Copyright © 2003; Top-Map Ltd.”
Italy	“La Banca Dati Italiana è stata prodotta usando quale riferimento anche cartografia numerica ed al tratto prodotta e fornita dalla Regione Toscana.”
Norway	“Copyright © 2000; Norwegian Mapping Authority”
Portugal	“Source: IgeoE – Portugal”
Spain	“Información geográfica propiedad del CNIG”
Sweden	“Based upon electronic data □ National Land Survey Sweden.”
Switzerland	“Topografische Grundlage: □ Bundesamt für Landestopographie.”

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

10. USPS SUITELINK:

- Ordering Activity's right to use the CASS Certified Interface and the SuiteLink Product shall be strictly limited to use only within the United States of America;
- Ordering Activity's right to use the CASS Certified Interface and the SuiteLink Product shall be strictly limited to improving business delivery addresses in multi-occupation buildings for use on letters, flats, postcards, packages, leaflets, magazines, postcards, advertisements, books, and other printed material, and any other item that will be delivered by USPS.
- Ordering Activity have no right to sublicense, sell or otherwise distribute, reproduce, perform, or prepare derivative works of the Interface or the SuiteLink Product.
- Ordering Activity acknowledges that:
 - the CASS Certified Interface and the SuiteLink Product under license from USPS;
 - You are a subOrdering Activity under SAP's license from USPS and obtain from Licensor no broader right than permitted under SAP's license agreement with USPS;
- You shall be strictly limited to using the CASS Certified Interface and the SuiteLink Product only as a component of SAP's Data Quality or Data Services products.

11. USPS NCOALINK

- Ordering Activity has no rights as to the NCOALink Interface under this agreement beyond using it as a component of Licensor's Data Quality and Data Services products in conjunction with the NCOALink data product to update a list, system, group or other collection of at least 100 unique names and addresses (herein "Mailing Lists") used for addressing letters, flats, postcards, packages, leaflets, magazines, advertisements, books and other printed material, and any other deliverable item handled by the United States Postal Service (herein "Deliverables") for delivery by the United States Postal Service (herein "USPS").
- Ordering Activity has no right to develop or use any NCOALink product, service, interface, or any related item or technology to compile or maintain a list or collection of names and addresses or addresses only of new movers or to create other products or data bases or collections of information concerning new movers, histories of address changes, lists or histories of residents, or other informational or data sources based upon information received from or through the NCOALink data or technology for the purpose of renting, selling, transferring, disclosing, making available or otherwise providing such information to an entity unrelated to Ordering Activity.
- For the purposes of communicating with addressees on Ordering Activity's Mailing Lists and for the purpose of record-keeping, however, Ordering Activity is permitted to retain updated addresses so long as not used in violation of paragraph 2 above, for individuals and entities with whom Ordering Activity has or had a business relationship, in connection with which Ordering Activity will use the updated address; however, these updated addresses may only be used by Ordering Activity and Ordering Activity may use them only for carrying out your

organizational purposes in connection with that individual or entity and may not transfer, disclose, license or distribute to, or be used by any other entity or individual whatsoever.

4. No proprietary Mailing List that contains both old and corresponding updated address records, or any service product or system of lists that can be used to link old and corresponding updated address records, if updated by use of NCOALink, shall be rented, sold, transferred, disclosed, made available, or otherwise provided, in whole or in part to your customers or any other individual or entity.
5. Ordering Activity's right to use the NCOALink Interface is strictly limited to use only within the United States, its territories, and possessions.
6. As to the Interface, Ordering Activity has the right only to update Mailing Lists used to prepare Deliverables that will be deposited with the USPS.
7. Ordering Activity has no right to sublicense, sell, assign, or otherwise transfer rights in, reproduce, perform, attempt to improve, reverse engineer, modify or otherwise change, or prepare derivative works of the Interface. Any attempt to sublicense, sell, assign, or otherwise transfer rights in, or otherwise distribute the Interface shall be void.
8. Ordering Activity acknowledges that:
 - a. USPS owns the NCOALink data, technology, and system in its entirety including that used in the development of the Interface;
 - b. USPS owns and retains rights in the trademark of NCOALink and in the registered trademarks UNITED STATES POSTAL SERVICE®, POSTAL SERVICE®, US POSTAL SERVICE®, AND USPS® ;
 - c. SAP is providing the Interface as a component of its products to Ordering Activity solely for use with the NCOALink Product under a nonexclusive, limited distribution license from USPS; and
 - d. the rights Ordering Activity obtains in this license are derived from SAP's agreement with USPS and you obtain from SAP no broader right than SAP obtains from USPS, except as to Ordering Activity's specific right to use the NCOALink Interface to access the NCOALink data.
9. Ordering Activity is strictly limited to using the Interface only as a component of SAP's Data Quality and Data Services products.
10. Ordering Activity acknowledges and agrees that Ordering Activity has no right to sublicense, sell, distribute, reproduce, or display USPS trademarks or sell the Interface or other products under USPS's trademarks.

12. USPS SUBLICENSE AGREEMENTS:

DPV SUBLICENSE AGREEMENT

This Sublicense Agreement ("Sublicense") between Contractor and Ordering Activity sets forth additional terms required by the United States Postal Service ("USPS") regarding Ordering Activity's use of the DPV option with other SAP CASS certified software.

For purposes of this Sublicense, Delivery Point Validation ("DPV") means the new USPS proprietary technology product designed to help mailers validate the accuracy of address data, right down to the physical delivery point. The DPV process cannot assign a ZIP+4 Code nor will it respond to a non-ZIP+4 coded address.

1. Ordering Activity understands that the USPS provides the DPV Product through special licensing in order to protect the USPS' proprietary intellectual property and its compliance with restrictions of Title 39 USC § 412.
2. Ordering Activity acknowledges that the address information contained within the DPV Product is subject to Title 39 USC § 412. Ordering Activity shall take all steps necessary to secure the DPV Product in a manner that fully complies with Section 412 constraints prohibiting the disclosure of address lists.
3. Ordering Activity acknowledges that the DPV Product is confidential and the proprietary property of the USPS. Ordering Activity further acknowledges that the USPS represents that it is the sole owner of copyrights and other proprietary rights in the DPV Product.
4. Ordering Activity shall not use the DPV Product technology to artificially compile a list of delivery points not already in Ordering Activity's possession or to create other derivative products based upon information received from or through the DPV Product technology.
5. No proprietary Ordering Activity address list(s) or service products or other system of records that contain(s) address attributes updated through DPV processing shall be rented, sold, distributed or otherwise provided in whole or in part to any third party for any purpose containing address attributes derived from DPV processing. Ordering Activity may not use the DPV technology to artificially generate address records or to create mailing lists.
6. The DPV Product processing requires Ordering Activity to have access to address information that appears on mail pieces. To ensure the confidentiality of this address information, no employee or former employee of Ordering Activity may, at any time, disclose to any third party any address information obtained in the performance of this agreement. Ordering Activity agrees to control and restrict access to address information to persons who need it to perform work under this agreement and prohibit the unauthorized reproduction of this information. Due to the sensitive nature of the confidential and proprietary information contained in the DPV Product, Ordering Activity acknowledges that unauthorized use and/or disclosure of the DPV will irreparably harm the USPS' intellectual property. Therefore, Ordering Activity (i) agrees to reimburse the USPS for any unauthorized use and/or disclosure at a rate of treble (3 times) the current annual fee charged to Ordering Activity hereunder; and (ii) consents to such injunctive or other equitable relief as a court of competent jurisdiction may deem proper.

7. CONTRACTOR, SAP AND THE USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF DPV, OR FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY. IN NO EVENT SHALL SAP'S OR THE USPS' LIABILITY TO ORDERING ACTIVITY HEREUNDER, IF ANY, EXCEED THE PRO RATA PORTION OF THE ANNUAL LICENSE FEE FOR DPV.

8. Reserved.

9. Ordering Activity acknowledges that the USPS reserves the right to stop DPV processing in the USPS' sole discretion. SAP will not be liable or responsible for any decision the USPS makes in canceling Ordering Activity's Sublicense, including, but not limited to, arbitrating the cancellation decision on behalf of the customer. In the event the USPS cancels Ordering Activity's DPV processing, (i) Ordering Activity shall not be entitled to any refund or credit from SAP; and, (ii) SAP will discontinue shipping DPV directories to Ordering Activity.

10. Ordering Activity agrees that the USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine Ordering Activity's sites. USPS or its designated representatives shall have the right examine, on or off Ordering Activity's premises, Ordering Activity's computer systems, processing files, documents, administrative records, and other materials to ensure Ordering Activity's compliance with the provisions of this agreement.

11. Ordering Activity further agrees that the USPS or its authorized representatives will, until three (3) years after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of Ordering Activity involving transactions related to this agreement.

12. Ordering Activity shall not export the DPV Product outside of the United States or its territories without prior written approval of the USPS.

13. This Sublicense shall be governed by the federal laws of the United States of America.

14. This Sublicense shall not be transferable, in whole or in part.

15. All obligations of Ordering Activity referred to in this Sublicense inure to the benefit of USPS.

13. USPS LACSLINK SOFTWARE SUBLICENSE

This Sublicense Agreement ("Sublicense") between Contractor and Ordering Activity sets forth additional terms required by the United States Postal Service ("USPS") regarding Ordering Activity's use of the LACSLink option with other CASS certified software.

1. For purposes of this document, the following terms shall be defined as set forth below:

- "USPS" means the United States Postal Service.
- "Deliverables" means letters, flats, postcards, packages, leaflets, magazines, postcards, advertisements, books, and other printed material, and any other item delivered by USPS.
- "Interface" means one or more SAP interfaces developed for use with the LACSLink Product. "LACSLink Product" means the confidential and proprietary database concerning the conversion of existing addresses to their new or update or replacement address or the like, provide by USPS in a highly and uniquely secured environment.

2. Ordering Activity's right to use the Interface shall be strictly limited to use only within the geographic boundaries governed by the United States, its territories, and possessions, and only for updating addresses and mailing lists used to prepare Deliverables for deposit with USPS in conformance with USPS requirements

Ordering Activity shall have no right to sublicense, sell or otherwise distribute, reproduce, perform, or prepare derivative works of the Interface. Ordering Activity hereby acknowledges that:

- USPS owns the LACSLink Product and USPS marks;
- SAP provides the SAP product in part under license from USPS;
- Ordering Activity is a Licensee under SAP's license from USPS and obtains from SAP no broader right than granted to SAP in such license from USPS;
- Ordering Activity shall be strictly limited to using the Interface only as a component of the SAP product; and Ordering Activity agrees that it does not have a right to sublicense, distribute, reproduce, perform, display, or sell the Interface or USPS's marks.

3. CONTRACTOR, SAP AND THE USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF LACSLink, OR FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY. IN NO EVENT SHALL SAP'S OR THE USPS' LIABILITY TO ORDERING ACTIVITY HEREUNDER, IF ANY, EXCEED THE PRO RATA PORTION OF THE ANNUAL LICENSE FEE FOR LACSLink BASED ON THE EFFECTIVE DATE OF CANCELLATION WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF CANCELLATION.

4. Reserved

5. Ordering Activity acknowledges that the USPS reserves the right to stop LACSLink Product processing in the USPS' sole discretion. SAP will not be liable or responsible for any decision the USPS makes in canceling Ordering Activity's Sublicense, including, but not limited to, arbitrating the cancellation decision on behalf of the customer. In the event the USPS cancels Ordering Activity's LACSLink Product processing, (i) Ordering Activity shall not be entitled to any refund or credit from SAP; and, (ii) SAP will discontinue shipping LACSLink Product directories to Ordering Activity.

6. Ordering Activity agrees that the USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine Ordering Activity's sites. USPS or its designated representatives shall have the right examine, on or off SubOrdering Activity's premises, Ordering Activity's computer systems, processing files, documents, administrative records, and other materials to ensure Ordering Activity's compliance with the provisions of this agreement.

7. Ordering Activity further agrees that the USPS or its authorized representatives will, until three (3) years after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of Ordering Activity involving transactions related to this agreement.
8. Ordering Activity shall not export the LACSLink Product outside of the United States or its territories without prior written approval of the USPS.
9. This Sublicense shall be governed by the federal laws of the United States of America.
10. This Sublicense shall not be transferable, in whole or in part.
11. All obligations of Ordering Activity referred to in this Sublicense inure to the benefit of USPS.
14. DSF2 Interface (USPS Delivery Sequence File - DSF2)
 1. Ordering Activity has no rights as to the DSF2 Interface under this agreement beyond using it in conjunction with the DSF2 data product to update a list, system, group or other collection of addresses (herein "Mailing Lists") used for addressing letters, flats, postcards, packages, leaflets, magazines, advertisements, books and other printed material, and any other deliverable item handled by the United States Postal Service (herein "Deliverables") for delivery by the United States Postal Service (herein "USPS").
 2. Ordering Activity's right to use the DSF2 Interface is strictly limited to use only within the United States, its territories, and possessions.
 3. As to the Interface, Ordering Activity has the right only to sequence and/or update Mailing Lists used to prepare Deliverables that will be deposited with the USPS.
 4. Ordering Activity has no right to sublicense, sell, assign, or otherwise transfer rights in, reproduce, perform, attempt to improve, reverse engineer, modify or otherwise change, or prepare derivative works of the Interface. Any attempt to sublicense, sell, assign, or otherwise transfer rights in, or otherwise distribute the Interface shall be void.
 5. Ordering Activity acknowledges
 - a. that USPS owns the DSF2 data, technology, and system in its entirety including that used in the development of the Interface;
 - b. that USPS owns and retains rights in the trademark of DSF2 and in the registered trademarks UNITED STATES POSTAL SERVICE®, POSTAL SERVICE®, US POSTAL SERVICE®, AND USPS® ;
 - c. that Licensee is providing the Interface to Ordering Activity solely for use with the DSF2 Product under a nonexclusive, limited distribution license from USPS; and
 - d. that the rights Ordering Activity obtains in this license are derived from Licensee's agreement with USPS and Ordering Activity obtains from Licensee no broader right than Licensee obtains from USPS, except as to Sublicensee's specific right to use the DSF2 Interface to access the DSF2 data.
 6. Ordering Activity is strictly limited to using the Interface only with the DSF2 Product; and
 7. Ordering Activity acknowledges and agrees that Ordering Activity has no right to sublicense, sell, distribute, reproduce, or display USPS trademarks or sell the Interface or other products under USPS's trademarks.

EXHIBIT 2 TO ATTACHMENT A - "PROFESSIONAL SERVICES SCHEDULE"

The parties agree that this Exhibit 2 is hereby annexed to and made a part of the Attachment A. WHEREAS, Ordering Activity licensed from Contractor the right to Use SAP Software pursuant to the Schedule Contract and Contractor, through SAP, provides, consulting and professional services ("Services") including support of installation and implementation of the licensed Software in the United States.

1. Services. Upon request by Ordering Activity, Contractor, through SAP, will provide a Consultant(s) to perform, at Ordering Activity's direction, consulting and professional services including support of installation and implementation of the applicable SAP Software ("Services"). Any Statement(s) of Work ("SOW") more fully describing the project assumptions, scope, duration and fees for the Services shall reference this Exhibit. All Services of the SAP Consultant(s) will be coordinated with the designated Ordering Activity representative. Ordering Activity is responsible for making the necessary internal arrangements for the carrying out of the Services on a non-interference basis.
2. Satisfaction with Performance. If at any time Ordering Activity or Contractor is dissatisfied with the material performance of an assigned Consultant or an Ordering Activity project team member, the dissatisfied party shall immediately report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change.
3. Reserved
4. Reserved.
5. Work Product. Unless otherwise agreed to in writing by the parties in a SOW, SAP shall have the right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the SAP Services and deliverables, whether or not developed for Ordering Activity.
6. Warranty. Contractor warrants that its Services shall be performed consistent with generally accepted industry standards. CONTRACTOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THIS SCHEDULE AND THE SERVICES PROVIDED HEREUNDER.

7. Reserved.

8. Reserved.

9. General Provisions.

9.1 Contractor may subcontract all or part of the Services to be performed to a qualified third party.

SAP STANDARD SUPPORT SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP as further defined herein ("SAP Standard Support") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "Standard Support Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions

1.1 "Production System" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.2 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information by interview or by analysis of a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.

2. Scope of SAP Standard Support

Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available, SAP Standard Support services. SAP Standard Support currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Standard Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Standard Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to Standard Support Solutions. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provides remote access as specified in Section 3.2(iii). SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP can communicate if SAP assigns the problem message to an overseas SAP support center. If either or both of these conditions are not fulfilled, SAP may not be able to start message handling or to continue message handling until these conditions are fulfilled.
- Global 24x7 escalation procedures.

Remote Services

- SAP Standard Support currently includes a choice of one of the following remote services per live installation per calendar year:
 - One GoingLive Check e.g. in case the customer decides to implement new SAP Software and use it productively;
 - One GoingLive Upgrade Check for an upgrade to a higher release; or
 - One GoingLive OS/DB Migration Check. This OS/DB Migration Check assists the Licensee in preparing for a migration of an operating system or database. Migration is the responsibility of the Licensee.
- In case of vital alerts reported by SAP EarlyWatch® Alert, up to two (2) SAP EarlyWatch® Checks may be performed per calendar year for a Production System if required.
- A service can consist of one or more Service Sessions.
- In order to meet the requested delivery date for a remote service, the remote service has to be ordered at least two months in advance of the desired remote service delivery date. The right to remote services only exists for a specific installation and is not transferable to other installations.
- Further information and detail about individual remote services can be found in SAP Service Marketplace at <http://service.sap.com/standardsupport>.

SAP Solution Manager Enterprise Edition under Standard Support

- SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is for the following purposes only under SAP Standard Support: (i) delivery of SAP Standard Support, including delivery and installation, upgrade and maintenance of Standard Support Solutions and (ii) re-active support upon request from Licensee, including without limitation application of break fixes (e.g. patches, notes, etc.) and root cause analysis for Standard Support Solutions (iii) management of Standard Support Solutions using only those scenarios which are part of the functional baseline as defined on the SAP Service Marketplace <http://service.sap.com/solutionmanager>
- SAP – in its sole discretion – may update from time to time, on the SAP Service Marketplace under <http://service.sap.com/solutionmanager>, the use cases for SAP Solution Manager Enterprise Edition under SAP Standard Support.
- SAP Solution Manager Enterprise Edition shall only be used for SAP Standard Support during the term of this Schedule and by the Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Standard Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. SAP Solution Manager must explicitly not be used for 3rd party applications not licensed via SAP or any other components or IT assets operated in conjunction with SAP software.
- In the event Licensee terminates SAP Standard Support and receives SAP Enterprise Support in accordance with Section 6, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Enterprise Support Schedule.

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Standard Support Solutions (e.g., SAP EarlyWatch Alert).
- Administrative integration of distributed systems through SAP Solution Manager Enterprise Edition for the purposes of SAP EarlyWatch Alert
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks.
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

3. Licensee's Responsibilities

3.1 SAP Standard Support Program Management

In order to receive SAP Standard Support hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise ("Customer COE") (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements

Licensee must further satisfy the following requirements:

- Continue to pay all Standard Support Fees in accordance with the Schedule contract and this Schedule.
- Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4.
- Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition Software system, with the latest patch levels for Basis and the latest SAP Solution Manager Enterprise Edition support packages.
- Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Standard Support Solutions and Licensee's SAP Solution Manager Enterprise Edition installation.
- Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system at least for the Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Standard Support Solutions.

4. Customer Center of Expertise

4.1 Role of the Customer COE

The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE

The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be reviewed in the framework of the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the Standard Support Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Standard Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Standard Support Solutions and the Customer COE within Licensee's organization.
- Remote Service Planning: coordination of remote service delivery with SAP

4.3 Customer COE Certification

If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date, or (ii) within six (6) months after Licensee has started using at least one of the Standard Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels is available in SAP Service Marketplace at <http://service.sap.com/coe>.

5. Fees for SAP Standard Support

SAP Standard Support Fees shall be paid annually in advance and shall be specified in order documents to the Schedule contract. After the Initial Term (as defined in appendices or order documents to the Schedule contract), any limitations on increases to the SAP Standard Support Fees are subject to Licensee's compliance with the Customer COE requirements specified above.

6. Termination

6.1 Licensee may select SAP Enterprise Support with 3 months notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the beginning of any calendar month; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to any monthly anniversary of the renewal date of such order. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Standard Support effective with the commencement of SAP Enterprise Support. Any such selection shall apply to all Standard Support Solutions, and shall be on SAP's terms and conditions for SAP Enterprise Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

6.2 For the avoidance of any doubt, termination of SAP Standard Support or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Standard Support or partial selection of SAP Standard Support by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

7. Other Terms and Conditions

7.1 The scope of SAP Standard Support offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Standard Support Solutions.

7.3 In the event that Licensee is entitled to receive one or more remote services per calendar year, (i) Licensee shall not be entitled to receive such remote services in the first calendar year if the Effective Date of this Schedule is after September 30 and (ii) Licensee shall not be entitled to transfer a remote service to the next year if Licensee has not utilized such remote service.

7.4 FAILURE TO UTILIZE SAP STANDARD SUPPORT PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

7.5 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Standard Support on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Standard Support. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

7.6 SAP Standard Support is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.

SAP ENTERPRISE SUPPORT SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP, as further defined herein ("SAP Enterprise Support") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "Enterprise Support Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions:

- 1.1 "Go-Live" marks the point in time from when, after implementation of the Enterprise Support Solutions or an upgrade of the Enterprise Support Solutions, the Enterprise Support Solutions can be used by Licensee for processing real data in live operation mode and for running Licensee's internal business operations in accordance with the Schedule contract.
- 1.2 "Licensee Solution(s)" shall mean Enterprise Support Solutions and any other software licensed by Licensee from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.
- 1.3 "Production System" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.
- 1.4 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be found on the SAP Service Marketplace (as specified in SAP Note 1324027 or any future SAP Note which replaces SAP Note 1324027).
- 1.5 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information by interview or by analysis of a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.
- 1.6 "Top-Issue" shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Production System.
- 1.7 "Local Office Time" shall mean regular working hours (8.00 a.m. to 6.00 p.m.) during regular working days, in accordance with the applicable public holidays observed by SAP's registered office. With regard to SAP Enterprise Support only, both parties can mutually agree upon a different registered office of one of SAP's affiliates to apply and serve as reference for the Local Office Time.

2. Scope of SAP Enterprise Support. Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Enterprise Support services. SAP Enterprise Support currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases. Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Enterprise Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Licensee with up to five days remote support services per calendar year from SAP solution architects
 - to assist Licensee in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Licensee's business process requirements.
 - to give Licensee guidance in form of knowledge transfer sessions, weighted one day, for defined SAP software/applications or Global Support Backbone components. Currently, content and session schedules are stated at <http://service.sap.com/enterprisesupport>. Scheduling, availability and delivery methodology is at SAP's discretion.
- SAP gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping the Licensee to optimize technical solution management of selected Enterprise Support Solutions.
- Configuration guidelines and content for Enterprise Support Solutions are usually shipped via SAP Solution Manager Enterprise Edition. Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as integral parts of Enterprise Support Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Enterprise Support Solutions and/or the applicable Documentation for the Enterprise Support Solutions.

Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Licensee custom code and enhancement packages and other Enterprise Support Solutions updates. Each check is conducted for one specific modification in one of Licensee's core business process steps. Licensee is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- Modification Justification: Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Enterprise Support Solutions which may fulfill the Licensee's requirements (for details see <http://service.sap.com/>).

- Custom Code Maintainability: Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to licensees and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- SAP Solution Manager Enterprise Edition – as described in Section 2.4

Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions, including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global 24x7 root cause analysis and escalation procedures in accordance with section 2.1 below.
- Root Cause Analysis for Custom Code: For Licensee custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3, applicable for priority "very high" and priority "high" messages. If the Licensee custom code is documented according to SAP's then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Licensee in issue resolution

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - Test administration for Enterprise Support Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - Quality Management for management of "Quality-Gates"
 - SAP-provided tools for automatic testing
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution. For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling and Service Level Agreement (SLA). When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. For further details on definition of message priorities see SAP Note 67739.

In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements ("SLA" or "SLAs") shall apply to all Licensee support messages that SAP accepts as being Priority 1 or 2 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of this Schedule. As used herein, "Calendar Quarter" is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

2.1.1 SLA for Initial Response Times:

a. **Priority 1 Support Messages ("Very High").** SAP shall respond to Priority 1 support messages within one (1) hour of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

b. **Priority 2 Support Messages ("High").** SAP shall respond to Priority 2 support messages within four (4) hours of SAP's receipt during SAP's Local Office Time of such Priority 2 support messages. A message is assigned Priority 2 if normal business transactions in a Production System are seriously affected and necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the SAP system that are required to perform such transactions and/or tasks.

2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages: SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Licensee's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message ("SLA for Corrective Action"). In the event an action plan is submitted to Licensee as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Licensee actions to support the resolution process; (iv) to the extent possible, planned dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP ("Processing Time"). Processing Time does not include the time when the message is on status "Customer Action" or "SAP Proposed Solution", whereas (a) the status Customer Action means the support message was handed over to Licensee; and (b) the status SAP Proposed Solution means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Licensee agrees to reduce the priority level of the message.

2.1.3 Prerequisites and Exclusions.

2.1.3.1 Prerequisites. The SLAs shall only apply when the following prerequisites are met for support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of Enterprise Support Solutions which are classified by SAP with the shipment status "unrestricted shipment"; (ii) support messages are submitted by Licensee in English via the SAP Solution Manager Enterprise Edition in accordance with SAP's then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance.

For Priority 1 support messages, the following additional prerequisites must be fulfilled by Licensee: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Licensee makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Licensee's obligations hereunder; and (c) a Licensee contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

2.1.3.2 Exclusions. For SAP Enterprise Support in particular the following types of Priority 1 messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Licensee (including without limitation those developed by SAP Custom Development and/or by SAP subsidiaries) except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications is expressly excluded even if these country versions were created by SAP or an affiliate of SAP; (iii) the root cause behind the support message is not a malfunction, but a missing functionality ("development request") or the support message is ascribed to a consulting request

2.1.4 Service Level Credit.

2.1.4.1 SAP shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Licensee submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any Calendar Quarter during the Enterprise Support term, Licensee agrees that SAP shall be deemed to have met its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

2.1.4.2. Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLA's are not met (each a "Failure"), the following rules and procedures shall apply: (i) Licensee shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Licensee's claim; (iii) Licensee shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP's ability to reach the SLAs; (iv) subject to this Section 2.1.4, if based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit ("SLC") to Licensee's next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Licensee's SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Licensee's SAP Enterprise Support Fee for such Calendar Quarter. Licensee bears the responsibility of notifying SAP of any SLCs within one month after the end of a Calendar Quarter in which a Failure occurs. No penalties will be paid unless notice of Licensee's well-founded claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Licensee's sole and exclusive remedy with respect to any alleged or actual Failure.

2.2 SAP Support Advisory Center. For Priority 1 and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP's support organization for mission critical support related requests (the "Support Advisory Center"). The Support Advisory Center will perform the following mission critical support tasks: (i) remote support for Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24x7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Licensee's IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Licensee; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.

As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Licensee's Contact Person and SAP shall jointly perform one mandatory setup service ("Initial Assessment") for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Licensee's Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for mission critical support related requests. The available local or global dial-in numbers are shown in SAP Note 560499.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

2.3 SAP Continuous Quality Check. In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the "Continuous Quality Check" or "CQC") per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Licensee and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Licensee, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Licensee with an action plan and/or written recommendations.

Licensee acknowledges that all or part of the CQC sessions may be delivered by SAP and/or a certified SAP partner acting as SAP's subcontractor and based on SAP's CQC standards and methodologies. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder. Licensee acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Licensee fails to follow these guidelines, SAP is not obliged to deliver the yearly CQC to the Licensee.

2.4 SAP Solution Manager Enterprise Edition under SAP Enterprise Support.

2.4.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP Enterprise Support: (i) delivery of SAP Enterprise Support and support services for Licensee Solutions including delivery and installation of software and technology maintenance for Enterprise Support Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with Enterprise Support Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the Enterprise Support Solutions.

For application lifecycle management as outlined under section 2.4.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.4.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.4.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.4.3 SAP – in its sole discretion – may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.4.

2.4.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule and by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Enterprise Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.4.5 In the event Licensee terminates SAP Enterprise Support and receives SAP Standard Support in accordance with Section 6, Licensee's use of SAP Solution Manager Enterprise Edition under SAP Enterprise Support shall cease. Thereafter, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Standard Support Schedule.

2.4.7 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP Enterprise Support Program Management. In order to receive SAP Enterprise Support hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise for the Support Advisory Center (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP Enterprise Support hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all Enterprise Support Service Fees in accordance with the Schedule contract and this Schedule.
- (ii) Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issue as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition Software system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (vii) Perform the Initial Assessment as described in Section 2.2 and implement all the recommendations of SAP classified as mandatory.
- (viii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Enterprise Support Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (ix) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (x) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (xi) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xii) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Enterprise Support Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise. In order to leverage the full potential value delivered as part of SAP Enterprise Support, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE. The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from the Licensee and/or any of its affiliates provided such affiliates are entitled to use the Enterprise Support Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Enterprise Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Enterprise Support Solutions and the Customer COE within the Licensee's organization.
- CQC and other remote services planning: Licensee regularly engages in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the Enterprise Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification

process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. **Enterprise Support Fees.** SAP Enterprise Support Fees shall be paid annually in advance and shall be specified in appendices or order documents to the Schedule contract. After the Initial Term (as defined in the applicable appendices or order documents), any limitations on increases to the SAP Enterprise Support Fees are subject to Licensee's compliance with the Customer COE requirements specified above.

6. **Termination**

6.1 Licensee may select SAP Standard Support with 3 months written notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the start of the renewal period that follows the Initial Term that commenced as of Licensee's first order for SAP Enterprise Support; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to the start of the first renewal period in any calendar year that follows the Initial Term that commenced as of Licensee's first order for SAP Enterprise Support. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Enterprise Support effective with the commencement of SAP Standard Support. Any such selection shall apply to all Enterprise Support Solutions and shall be on SAP's terms and conditions for SAP Standard Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

6.3 For the avoidance of any doubt, termination of SAP Enterprise Support or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Enterprise Support or partial selection of SAP Enterprise Support by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

7. **Other Terms and Conditions.**

7.1 The scope of SAP Enterprise Support offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

7.3 In the event that Licensee is entitled to receive one or more services per calendar year, (i) Licensee shall not be entitled to receive such services in the first calendar year if the Effective Date of this Schedule is after September 30 and (ii) Licensee shall not be entitled to transfer a service to the next year if Licensee has not utilized such service.

7.4 FAILURE TO UTILIZE SAP ENTERPRISE SUPPORT PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

7.5 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Enterprise Support on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Enterprise Support. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

7.6 SAP Enterprise Support is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.

SAP PRODUCT SUPPORT FOR LARGE ENTERPRISES SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP, for certain large enterprises as further defined herein ("SAP Product Support for Large Enterprises" or "SAP PSLE") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "PSLE Solutions"), excluding software to which special support agreements apply exclusively.

1. **Definitions:**

1.1 "Go-Live" marks the point in time from when, after implementation of Licensee's PSLE Solutions or an upgrade of PSLE Solutions, can be used by Licensee for processing real data in live operation mode and for running Licensee's business in accordance with the Schedule contract.

1.2 "Net License Value" shall mean the undiscounted license fees for PSLE Solutions licensed by Licensee and Licensee Affiliates under the Schedule contract minus all discounts granted by SAP but before any migration credit is applied.

1.3 "Licensee Solution(s)" shall mean PSLE Solutions and any other software licensed by Licensee from third parties, provided such third party software is operated in conjunction with PSLE Solutions.

1.4 "Production System(s)" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be found on the SAP Service Marketplace (as specified in SAP Note 1324027 or any future SAP Note which replaces SAP Note 1324027).

1.6 "Top-Issues" shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with the SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Licensee's core Production System.

1.7 "SAP Support Services" shall mean SAP Product Support for Large Enterprises, SAP Enterprise Support or SAP Standard Support.

2. **Scope of SAP Product Support for Large Enterprises.** Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Product Support for Large Enterprises services. SAP Product Support for Large Enterprises currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed PSLE Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or PSLE Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping Licensee to optimize technical solution management of selected PSLE Solutions.
- Configuration guidelines and content for PSLE Solutions are usually shipped via SAP Solution Manager Enterprise Edition
- Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as part of PSLE Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the PSLE Solutions and/or the applicable documentation for the PSLE Solutions.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to PSLE Solutions (for more information refer to Section 2.1).
- Global 24x7 escalation procedures.

Access to Services Content

- SAP shall provide Licensee with access to SAP's remote services methodology. Licensee may use this content to perform proactive support services for the PSLE Solutions.

SAP Product Support for Large Enterprises Roadmap Planning

- Up to two times per calendar year, Licensee and SAP will perform a joint telephone conference to exchange information about Licensee's current or planned global projects to implement or upgrade PSLE Solutions, to review Top-Issues and risk mitigation plans and to discuss quality assurance topics with regard to end-to-end operations of and support for Licensee's SAP Software Solutions, and to generally align on collaboration between Licensee and SAP in the area of support activities and delivery of SAP Product Support for Large Enterprises services for Licensee's SAP Software Solutions.
- Licensee can contact the local support manager of SAP to request a scheduling of such telephone conference.
- If mutually agreed between Licensee and SAP, such planning can also take place in the course of an onsite meeting at a mutually agreed location.
- Licensee acknowledges that a successful planning requires the support of Licensee's Customer Center of Expertise.

SAP Solution Manager Enterprise Edition as described in Section 2.2

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems - to monitor available resources and collect system status information of the PSLE Solutions (e.g. SAP EarlyWatch Alert).
 - Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - Test administration for PSLE Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - Quality Management for management of "Quality-Gates"
 - SAP-provided tools for automatic testing
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
 - Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
 - Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution.
- For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>

- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time.

In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provides remote access as specified in Section 3.2(iii).

SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP can communicate if SAP assigns the problem message to an overseas SAP support center. Until these conditions are fulfilled, SAP may not be able to start message handling or to continue message handling.

2.2 SAP Solution Manager Enterprise Edition under SAP Product Support for Large Enterprises

2.2.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP PSLE: (i) delivery of SAP PSLE and support services for Licensee Solutions including delivery and installation of software and technology maintenance for PSLE Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with PSLE Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the PSLE Solutions.

For application lifecycle management as outlined under section 2.2.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.2.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.2.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.2.3 SAP – in its sole discretion – may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.2.

2.2.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP PSLE other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.2.5 In the event Licensee terminates SAP PSLE and receives SAP Standard Support in accordance with Section 7, Licensee's use of SAP Solution Manager Enterprise Edition under SAP PSLE shall cease. Thereafter, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Standard Support Schedule.

2.2.6 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP Product Support for Large Enterprises Program Management. In order to receive SAP Product Support for Large Enterprises hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP Product Support for Large Enterprises hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all SAP Product Support for Large Enterprise Service Fees in accordance with the Schedule contract and this Schedule.
- (ii) Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (vii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the PSLE Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (viii) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (ix) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (x) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xi) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the PSLE Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise In order to leverage the full potential value delivered as part of SAP Product Support for Large Enterprises, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE: The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the PSLE Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of PSLE Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about PSLE Solutions and the Customer COE within Licensee's organization.
- Service Planning: Licensee regularly engages in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the PSLE Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure that covers the basic functions (primary certification). Licensee has the option to pursue advanced certification of their Customer COE. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. Revenue Thresholds.

5.1 Licensee shall be eligible to receive SAP Product Support for Large Enterprises from the date at which Licensee informs SAP in writing about the meeting of both of the following criteria: (i) the aggregate of the overall yearly expenditure of Licensee and all Licensee Affiliates under the Schedule contract on the following exceeds or is equal to USD 7,000,000. (seven million dollars) (the "Maintenance Threshold"): (a) SAP Enterprise Support, whereas, for purposes of this paragraph, yearly expenditures shall be deemed to be the product of seventeen percent (17%) times the applicable Net License Value, irrespective of the then current SAP Enterprise Support Factor in effect, (b) SAP Product Support for Large Enterprises (currently 17%) times the applicable Net License Value, (c) SAP Standard Support, whereas, for purposes of this paragraph, yearly expenditures shall be deemed to be the product of seventeen percent (17%)

times the applicable Net License Value, irrespective of the then current SAP Standard Support Factor in effect, (d) Maintenance for software licensed from Business Objects; and (e) MaxAttention; and (ii) the Net License Value exceeds or is equal to USD 40,000,000 (forty million dollars) (the "License Threshold").

5.2 During the term of this Schedule, Licensee shall be responsible for advising SAP if Licensee falls below the Maintenance Threshold and/or the License Threshold. Upon Licensee's request, SAP will assist Licensee in this determination. If Licensee falls below either or both of these thresholds Licensee shall inform SAP thereof immediately and from the date Licensee falls below the Maintenance Threshold and/or the License Threshold the following shall apply: (a) the SAP Product Support for Large Enterprises Factor for Licensee's and Licensee's Affiliates PSLE Solutions under Appendices to the Schedule contract is replaced by an SAP Product Support for Large Enterprises Factor of 21.42% in 2011; 22% in 2012 through 2016 and thereafter the then current SAP Enterprise Support Factor according to SAP's then current price list; (b) the scope of SAP's support shall remain as defined in Section 2 above; (c) the SAP Product Support for Large Enterprises Factor for any additional purchases of software licenses subsequent to falling below the Maintenance Threshold and/or the License Threshold will be 22% through 2016; and thereafter the then current SAP Enterprise Support Factor according to SAP's then current price list;

SAP will offer to Licensee the option to select SAP Enterprise Support or SAP Standard Support in accordance with its then current terms. If Licensee selects SAP Enterprise Support, the following shall apply: The SAP Enterprise Support Factor shall be 18.9% in 2011, 19.5% in 2012, 20.1% in 2013, 20.8% in 2014, 21.4% in 2015, 22% in 2016, and the SAP Enterprise Support Factor for additional purchases of software licenses subsequent to switching to SAP Enterprise Support will be 22% through 2016. Thereafter the then-current SAP Enterprise Support Factor according to SAP's then current price list. If Licensee selects SAP Standard Support, such services shall be provided in accordance with SAP's terms and conditions including without limitation GSA pricing. In either case, SAP and Licensee shall execute an amendment to the Schedule contract memorializing Licensee's selection and SAP's the maintenance terms and conditions.

In addition, in the event Licensee notifies SAP on the day of, or prior to its falling below the Maintenance and/or License Threshold, that Licensee is switching to SAP Enterprise Support or SAP Standard Support, then Licensee shall be permitted to stay on SAP Product Support for Large Enterprises at a Factor of 17% for the period until the switch to SAP Enterprise Support or SAP Standard Support is contractually executed, for a maximum a period of 90 days, after which time the Factors set forth in 5.2 (a) shall apply. **5.3** Licensee is not eligible for SAP Product Support for Large Enterprises: (i) during the period between meeting the criteria under 5.1 and the date at which SAP receives written notice from Licensee that Licensee meets these criteria; and (ii) during the period between the date at which Licensee falls below the criteria under 5.1 and the date at which Licensee informs SAP accordingly, if the date of Licensee's notification to SAP is after the date at which Licensee fell below the criteria under 5.1.

5.4 Licensee shall not receive any refund, including, but not limited to, previously paid maintenance fees, e.g. fees paid for SAP Enterprise Support.

- 6. Fees for SAP Product Support for Large Enterprises.** SAP Product Support for Large Enterprises Fees shall be paid annually in advance and shall be specified in Appendices to the Schedule contract. After the Initial Term (as defined in the applicable appendices, software agreements or order documents), the SAP Product Support for Large Enterprises Fees and any limitations on increases are subject to Licensee's compliance with the Customer COE requirements specified above.

7. Termination

7.1 Licensee may select either SAP Enterprise Support or SAP Standard Support in accordance with the following provisions.

7.1.1 SAP Enterprise Support. Licensee may select SAP Enterprise Support with three (3) months' written notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the beginning of any calendar month; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to any monthly anniversary of the renewal date of such order. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Product Support for Large Enterprise effective with the commencement of SAP Enterprise Support. Any such selection shall apply to all PSLE Solutions, and shall be on SAP's terms and conditions for SAP Enterprise Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

7.1.2 SAP Standard Support. Licensee may select SAP Standard Support with three (3) months' written notice either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the start of the renewal period that follows the Initial Term that commenced as of Licensee's first order for SAP Product Support for Large Enterprises; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to the start of the first renewal period in any calendar year that follows the Initial Term that commenced as of Licensee's first order for SAP PSLE. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Product Support for Large Enterprises effective with the commencement of SAP Standard Support. Any such selection shall apply to all PSLE Solutions and shall be on SAP's terms and conditions for SAP Standard Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

7.2 For the avoidance of doubt, termination of SAP Product Support for Large Enterprises or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Product Support for Large Enterprise or partial selection of any one type of SAP Support Services by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

8. Other Terms and Conditions.

8.1 The scope of SAP Product Support for Large Enterprises offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

8.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

8.3 FAILURE TO UTILIZE SAP PRODUCT SUPPORT FOR LARGE ENTERPRISES PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

8.4 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Product Support for Large Enterprises on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Product Support for Large Enterprises. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

8.5 SAP PSLE is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.

Seceon Inc.
238 Littleton Rd, Suite 202
Westford, MA 01886

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Seceon Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SECEON INC.

SECEON INC. WARRANTY AND SUPPORT TERMS

Attachment A – Seceon

End User License Agreement

1) Definitions.

- a) "Authorized Partner" means any of Seceon's distributors, resellers or other business partners.
- b) "Grant Letter" means a confirmation notice letter issued electronically by Seceon to you, confirming Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and also containing download details.
- c) "Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
- d) "Seceon" means (a) Seceon, Inc., a Massachusetts corporation, with an office located at 238 Littleton Rd., Suite 202, Westford, MA 01886 USA) "Node" means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homeworke/teleworker homebased systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers or portable workstations connected or connecting to the server(s) or network.
- e) "Software" means each Seceon software program in object code format licensed by Seceon and purchased from Seceon or its Authorized Partners, including Upgrades.
- f) "Subsidiary" refers to any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.
- g) "Support" or "Technical Support" means the support services offered by Seceon for the support and maintenance of the Software and Seceon brand hardware further specified in the Seceon Technical Support and Maintenance Terms. i) "Updates" are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Software which are made generally available to Seceon's customer base as a part of purchased Support and which are not separately priced or marketed by Seceon.
- h) "Upgrade" means any and all improvements in the Software which are made generally available to Seceon's customer base as part of purchased Support and which are not separately priced or marketed by Seceon.

2) License Grant. Subject to the terms and conditions of this Agreement and the applicable ordering document, Seceon hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) for your own internal business operations. You acknowledge that the Software and all related information are proprietary to Seceon and its suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.

3) Copy and Use terms.

- a) Product entitlement: The use of the Software depends on the licenses purchased (e.g. Nodes). Software is installed may not exceed your product entitlement. Certain Software licensed as part of a suite-based Seceon product may also require the purchase of a separate Seceon server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.
- b) Term: The license is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter and the applicable ordering document, otherwise the licenses shall be perpetual.
- c) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
- d) Managing Party: If you enter into a contract with a third party in which the third party manages your information technology resources ("Managing Party"), you may transfer all your rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and (c) you provide Seceon with written notice that a Managing Party will be using the Software on your behalf.
- e) Subsidiaries: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You shall be responsible and fully liable for each Subsidiary's compliance with or breach of the terms of this Agreement.
- f) General Restrictions: You may not, nor allow any third party to:
 - (i) decompile, disassemble or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without Seceon's prior written consent;
 - (ii) remove any product identification or proprietary rights notices of the Software or Documentation;
 - (iii) lease, lend or use the Software for timesharing or service bureau purposes;
 - (iv) modify or create derivative works of the Software,
 - (v) except with Seceon's prior written permission, publish any performance or benchmark tests or analysis relating to the Software or
 - (vi) otherwise use or copy the Software except as expressly provided herein.

4) Technical Support and Maintenance. The Seceon Technical Support and Maintenance Terms apply if you have purchased Support. The Seceon Technical Support and Maintenance Terms are incorporated by reference. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support.

5) Limited Warranty and Disclaimer.

a) Limited Warranty: Seceon warrants that, for a period of 1 year from the purchase date ("Warranty Period"), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.

b) Exclusive Remedy: In case of any breach of the above limited warranty, Seceon will (a) repair or replace the Software or (b) if such repair or replacement would in Seceon's opinion be commercially unreasonable, refund the price paid by you for the applicable Software.

c) Exclusion of Warranty: The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation, (ii) the Software or any part thereof has been modified by any entity other than Seceon or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by Seceon.

d) Disclaimer: THE ABOVE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND SECEON MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

e) Reserved.

6) Reserved.

7) Intellectual Property Indemnity.

a) Third-party claims: Subject to 28 U.S.C. § 516, Seceon shall defend and hold you harmless from any claim by a third party that the Software infringes, whether a patent, copyright or trade secret of that third party, provided that: (i) Seceon is notified promptly, and in any event no later than within 14 days of your receipt of notice of the claim, (ii) Seceon receives the required level of reasonable cooperation from you in order to perform Seceon's obligations hereunder and (iii) Seceon has control over the defense and all negotiations for a settlement or compromise of the claim. The foregoing obligation of Seceon does not apply with respect to Software or portions or components thereof that are: (i) not supplied by Seceon, (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation, (iii) made in accordance with your specifications, (iv) modified by anyone other than Seceon, if the alleged infringement relates to such modification, (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination or (vi) where you continue the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.

b) Remedy and Liability: In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, Seceon shall, at its sole discretion, do one of the following: (i) procure for you the right to continue use of the Software, (ii) provide a modification to the Software so that its use becomes non-infringing, (iii) replace the Software with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to Seceon, Seceon shall refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you. This Section 7 states Seceon's sole liability and your exclusive remedy for intellectual property infringement claims.

8) Reserved.

9) Additional Terms.

a) Reserved.

b) Reserved.

c) "Free" or "Open-Source" Software: The product may include programs or code that are licensed under an OpenSource Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

10) Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11) Privacy and Collection of Personal or System Information.

a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users' name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Seceon products installed, Seceon components, processes and services information, frequency and details of update of Seceon components, information about third party products installed, extracts of logs created by Seceon, usage patterns of Seceon products and specific features, etc.) (collectively, "Data").

b) The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users' computer network), enable Seceon to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

c) You are solely responsible for securing any privacy-related rights and permissions from your users as may be required by local law or by your internal policies. Seceon will only collect, process, copy, backup, store, transfer and use personally identifiable information.

12) Audit. Subject to your security requirements, Seceon may, at its expense, upon reasonable prior written notice to you and during standard business hours, audit you with respect to your compliance with the terms of this Agreement no more than once per year.

You understand and acknowledge that Seceon utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your Software deployment, such request to occur no more than two (2) times per year. Seceon will not unreasonably interfere with the conduct of your business.

13) Export Controls. You acknowledge that the Software is subject to US export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see http://Seceon.com/us/about/export_compliance/index.html (then click on US Export Compliance. Seceon reserves the right to update this website from time to time, at its sole discretion.)

14) Reserved.

15) Reserved.

16) Reserved.

Secure Channels Inc.
16400 Bake Parkway
Suite 100
Irvine, CA 92618

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Secure Channels Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

- 4. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

Secure Channels Inc.

All references to Secure Channels, Inc. ("SCI") in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, SCI."

SECURE CHANNELS, INC.'S END USER LICENSE AND TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

This End User License and Technical Support and Maintenance Agreement ("EULA") is a legal agreement between the Customer ("you") either a Government agency or instrumentality and Secure Channels, Inc. and its subsidiaries (collectively, "SCI") for SCI's Software, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively "Licensed Software") as well as technical support and maintenance services for the Licensed Software ("Technical Support and Maintenance") if acquired from SCI. The Licensed Software also includes any updates and supplements to the original Licensed Software which may be provided to you by SCI.

The Licensed Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Licensed Software is licensed, not sold.

1. Grant of License; License Keys.

- A. **Grant.** Under this EULA, SCI grants to you a non-exclusive license to use the version of the Licensed Software provided to you by SCI, and to receive Technical Support and Maintenance if acquired, solely for your own internal purposes and subject to the terms of this EULA. Your use of the Licensed Software shall also be in accordance with the documentation for the Licensed Software and the applicable License Key and License Configuration as defined herein. Your license rights as specified herein may be perpetual ("Perpetual License"), or limited to a subscription period, if applicable ("Subscription License"). You may allow your employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) to use the Licensed Software for your internal purposes and you are responsible for their compliance with the terms of this EULA in such use. Unless otherwise provided in this EULA, you may only make copies of the Licensed Software for archive purposes. The Licensed Software is deemed accepted as provided in the Federal Acquisitions Regulations ("FAR") and the underlying ordering document.
- B. **License Keys.** The Licensed Software may require an applicable license key in order to access its functionality ("License Key"). In order to access the full functionality of the Licensed Software, each copy of the Licensed Software may require an applicable License Key issued by SCI for a limited number of servers or users, specifically identified computers, fixed subscription period and/or other usage rights or limitations ("License Configuration") specified in an applicable ordering document ("Order").

2. Other Rights and Limitations.

- A. **Limitations on Reverse Engineering, Decompilation and Disassembly.** You shall not cause or permit the reverse engineering, decompilation, or disassembly of the Licensed Software or any portion thereof, except and only to the extent that such activity is expressly permitted by applicable federal law.
- B. **Marks.** This EULA does not grant you any rights in connection with any trademarks or service marks of SCI. You shall not remove or modify any Licensed Software markings or any notice of SCI's proprietary rights.
- C. **Third Party Use.** You shall not rent, lease or lend the Licensed Software, or make the Licensed Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted in writing by SCI).
- D. **Actual License Limits.** You may not use software or hardware that (i) reduces the number of users directly accessing or utilizing the Licensed Software; (ii) allows you to exceed the number of processors ("CPUs") or servers for which the Licensed Software is licensed to you; or (iii) otherwise prevents the Licensed Software from keeping an accurate count of the number of users, CPUs or servers actually accessing or utilizing the Licensed Software.
- E. **Benchmarks and Competitive Use.** You shall not disclose results of any Licensed Software benchmark tests without SCI's prior written consent. The Licensed Software may not be used for purposes of competitive analysis or development of a competitive product.
- F. **Proprietary Rights.** All rights, title, interest and copyrights in and to the Licensed Software are owned by SCI or its licensors.

3. **Technical Support and Maintenance Services.** This EULA does not entitle you to receive any enhancements, improvements or modifications to the Licensed Software. SCI may provide you with Technical Support and Maintenance if you have ordered such services from SCI, subject to the execution of an applicable Order. Use of Technical Support and Maintenance is governed by SCI's policies and programs. Any enhancements, improvements, modifications or other supplemental software provided to you as part of Technical Support and Maintenance shall be considered part of the Licensed Software and subject to the terms and conditions of this EULA. With respect to technical information you provide to SCI as part of Technical Support and Maintenance, SCI may use such information for its business purposes, including for product support and development.

4. **Inspection/Acceptance.** The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("SCI") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights: (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

5. Warranties, Disclaimers and Remedies.

If you have acquired a Perpetual License for the Licensed Software, SCI warrants for 90 days after acceptance in accordance with the FAR and the underlying ordering document, (the “**Warranty Period**”) that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

If you have acquired a Subscription License for the Licensed Software, SCI warrants for 90 days after the start of your subscription, or an annual renewal of such subscription, if applicable (“**Subscription Warranty Period**”) that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

You must notify SCI of any Licensed Software warranty deficiency during the applicable Warranty Period. SCI also warrants that if you contracted and paid for Technical Support and Maintenance, it will be provided in a professional manner consistent with industry standards. You must notify SCI of any Technical Support and Maintenance warranty deficiencies within 60 days of the performance of the deficient Technical Support and Maintenance.

SCI DOES NOT WARRANT OR GUARANTEE THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT SCI WILL CORRECT ALL ERRORS IN THE LICENSED SOFTWARE. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND SCI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND SCI'S ENTIRE LIABILITY, SHALL BE, AT SCI'S DISCRETION, AS APPLICABLE, FOR THE LICENSED SOFTWARE, (A) THE CORRECTION OF ERRORS IN THE LICENSED SOFTWARE THAT CAUSE BREACH OF THE WARRANTY; OR (B) TERMINATION OF YOUR LICENSE AND REFUND OF THE FEES YOU PAID TO SCI FOR THE SPECIFIC LICENSED SOFTWARE (IN THE CASE OF SUBSCRIPTIONS, SUCH REFUND SHALL BE LIMITED TO THE THEN-CURRENT SUBSCRIPTION PERIOD) AND ANY UNUSED, PREPAID TECHNICAL SUPPORT AND MAINTENANCE FEES YOU HAVE PAID FOR THE SPECIFIC LICENSED SOFTWARE; AND FOR TECHNICAL SUPPORT AND MAINTENANCE, (C) THE REPERFORMANCE OF DEFICIENT TECHNICAL SUPPORT AND MAINTENANCE; OR (D) TERMINATION OF THE RELEVANT TECHNICAL SUPPORT AND MAINTENANCE AND REFUND ANY UNUSED PREPAID TECHNICAL SUPPORT AND MAINTENANCE FEES YOU HAVE PAID TO SCI FOR THE DEFICIENT TECHNICAL SUPPORT AND MAINTENANCE.

The Licensed Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Licensed Software could lead directly to death, personal injury or severe physical or property damage (collectively, “High Risk Activities”). SCI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR FITNESS FOR HIGH RISK ACTIVITIES.

6. **Reserved.**

7. **Reserved.**

8. **Indemnification.** If someone makes a claim against you that the Licensed Software provided to you by SCI under this EULA and used by you according to the documentation for the Licensed Software infringes that party's intellectual property rights, SCI will indemnify and hold you harmless against the claim provided you: (a) notify SCI promptly in writing, not later than 30 days after you receive notice of the claim; (b) provide SCI with the opportunity to intervene in any litigation, at its own expense, through counsel of its choosing SCI and (c) SCI will provide the Government with the information, assistance and authority as required to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If SCI believes or it is determined that the Licensed Software violated someone else's intellectual property rights, SCI may choose in its discretion to: (i) modify the Licensed Software to be non-infringing; (ii) work with the Government to obtain a license for you to allow for continued use; or (iii) terminate the license for the Licensed Software and require its return, and refund a prorated portion of any fees you may have paid for the Licensed Software. SCI has no obligation to indemnify or hold you harmless: (A) if you alter the Licensed Software or use it outside the scope of the License Configuration; (B) if you continue to use a version of the Licensed Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Licensed Software which was provided to you; (C) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by SCI; or (D) to the extent an infringement claim is based upon the combination of the Licensed Software with any products or services not provided to you by SCI.

9. **Reserved.**

10. **Reserved.**

11. **Other.**

A. **Audit.** Upon 30 days written notice, and subject to Government security requirements, SCI may audit your use of the Licensed Software, but no more than once-during a 12-month period. During standard business hours and upon prior written notice, SCI may visit you and you shall cooperate with SCI's audit and provide reasonable assistance and access to information. SCI shall comply with all security requirements of your facility and shall not interfere with your normal business operations.

B. **U.S. Government Restricted Rights.**

All Licensed Software provided to the U.S. Government is provided only with the rights described as stated in DFAR Section 227.7202, FAR Section 12.212, FAR 52.227-14 and DFARS 252.227.7015, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed by the terms of this Agreement and the applicable ordering document and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

- C. **Export Restrictions.** You acknowledge that the Licensed Software is subject to U.S. export jurisdiction. You shall comply with all applicable federal laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. Government.
- D. **Transfer Restrictions.** You shall not assign or otherwise transfer this EULA or any portion of the Licensed Software, or any copies thereof or any of your interests in any of the foregoing, without SCI's prior written consent. Assignment by SCI is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). This EULA will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.
- E. **Reserved.**
- F. **Reserved.**

Siemens Industry, Inc.
1911 Harrison Street
Hollywood, FL 33020

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Siemens Industry, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SIEMENS INDUSTRY, INC.

SIEMENS INDUSTRY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Buyer's Requirements. Timely performance by Contractor through Siemens is contingent upon Ordering Activity's supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.

2. Limited Warranty. (a.) Limited Product Warranty Statements. For each Product purchased from Contractor or an authorized reseller, Contractor makes the following limited warranties: (i) the Product is free from defects in material and workmanship, (ii) the Product materially conforms to Siemens' specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, Siemens has title to the Product free and clear of liens and encumbrances (collectively, the "Limited Warranties"). Warranties with respect to software which may be furnished by Contractor as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by Contractor. If software is furnished by Contractor, then the attached Software License/Warranty Addendum shall apply.

(b.) Conditions to the Limited Warranties. The Limited Warranties are conditioned on (i) Ordering Activity storing, installing, operating and maintaining the Product in accordance with Siemens' instructions, (ii) no repairs, modifications or alterations being made to the Product other than by Contractor through Siemens or its authorized representatives, (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Ordering Activity discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Ordering Activity providing prompt written notice of any warranty claims within the warranty period described below, (vi) at Contractor's discretion, Ordering Activity either removing and shipping the Product or non-conforming part thereof to Contractor through Siemens, at Ordering Activity's expense, or Ordering Activity granting Contractor through Siemens access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Ordering Activity not being in default of any payment obligation to Contractor under these terms.

(c.) Exclusions from Limited Warranty Coverage. The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Siemens or not bearing its nameplate. To the extent permitted, Contractor hereby assigns any warranties made to Siemens for such non-Siemens equipment. Contractor shall have no liability to Ordering Activity under any legal theory for such non-Siemens equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Ordering Activity "as is" with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses and light bulbs and lamps.

(d.) Limited Warranty Period. Ordering Activity shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide Contractor with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Ordering Activity, unless Ordering Activity has previously provided Contractor with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to Siemens' choice of repair or replacement of the Product, or non-conforming parts thereof, or refund of all or part of the purchase price. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by Siemens, (i) Contractor shall be responsible for any labor required to gain access to the Product so that Siemens can assess the available remedies and (ii) Contractor shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of Siemens.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product. THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

3. Patent and Copyright Infringement. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding to the extent permitted by 28 U.S.C. 516. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes noninfringing.

Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

SunView Software, Inc.
10210 Highland Manor Drive Suite 275
Tampa, FL 33610

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Sunview Software, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SunView Software, Inc.

SunView Software, Inc. LICENSE, WARRANTY AND SUPPORT TERMS

Section 1 - Definitions:

The following definitions apply throughout this Agreement: "Software" means SunView Software ChangeGear Software Enterprise Versions, the computer software and all associated printed materials, which may include "online" or electronic documentation; "Use" means storing, loading, installing, executing or displaying the Software; "Computer" means a central processing unit ("CPU") or group of CPU's that accesses its or their own individual non-cache Random Access Memory; "Server" means a Computer that permits Concurrent Use by multiple users; "Client" means a Computer used to access a Server; "Concurrent Use" means access, directly or indirectly, by a licensed user of the Software executing on a Server; "Professional Services" means training, implementation, installation, on-site assistance, customization and configuration of the Software.

Section 2 - License Grant - Usage in General:

Ordering Activity may Use the Software pursuant to the terms of the particular license(s) Ordering Activity have acquired as specified in an applicable order.

SunView Software grants to Ordering Activity, and Ordering Activity accepts, the non-exclusive, nontransferable limited right to Use the Software in object code form only, and only on a single Computer.

SunView Software may grant Ordering Activity either a Named User License or a Concurrent User License, subject to the terms below.

(a) **Named User License:** If SunView Software grants Ordering Activity a "Named User License," the Software may only be used by the individual designated by the administrator as the "Named User" for that copy of the Software. The Named User may Use that particular copy of the Software on any Computer.

(b) **Concurrent User License:** If SunView Software grants Ordering Activity a "Concurrent User License," Ordering Activity is only authorized to permit the Concurrent Use of the Software installed on a Server by the number of Clients for which Ordering Activity has purchased Concurrent Use Licenses. The Software may contain codes that enforce Concurrent Use restrictions. Ordering Activity may only Use the Software installed on the Server if the Use of the Software on such Server is properly licensed and complies with the conditions and restrictions (including any Concurrent Use restrictions) of such Server license.

Section 3 - License Rights and Restrictions:

(a) **Ownership:** Ordering Activity acknowledges and agrees that the Software is owned and copyrighted by SunView Software or its third party suppliers and/or licensors. Ordering Activity license confers no title or ownership in the Software and is not a sale of any rights in the Software. All ownership rights remain in SunView Software or its third party suppliers and/or licensors, as the case may be. SunView Software and ChangeGear are trademarks or service marks or registered trademarks of SunView Software in the United States of America and/or in other countries. All other marks in the Software are the marks of their respective owners.

(b) **Copies:** Ordering Activity may only make one (1) copy of the object code of the Software, which Ordering Activity may Use, subject to the terms of this Agreement, solely for (i) backup or archival purposes and (ii) development and testing purposes, or when copying is an essential step in the authorized Use of the Software. Ordering Activity must reproduce all copyright and other proprietary or restricted rights notices in the original Software on the authorized copy. Ordering Activity may not copy any of the books or printed materials provided in connection with the Software.

(c) **Additional Restrictions:** The Software contains SunView Software trade secrets, which Ordering Activity may not disclose. Ordering Activity may also not decompile, reverse engineer, disassemble, copy, modify, translate, or adapt the Software, or create derivative works based on the Software, or otherwise reduce the Software to human-perceivable form except to the extent that such rights cannot be excluded by mandatory applicable law. Ordering Activity may not disable any licensing, anti-piracy or other control features of the Software. Except to the extent expressly permitted herein, Ordering Activity may not: permit other individuals to Use the Software; rent, resell for profit, distribute, sublicense, lease, grant a security interest in, or otherwise transfer or assign any rights to the Software; or remove any proprietary notices or labels on the Software. Ordering Activity may not combine or integrate the Software with or into any other software programs or services. Ordering Activity may not use the Software to create competitive products or applications or to create software or products using similar features, functions or graphics of the Software. Ordering Activity may not disclose to third parties any benchmark tests or other evaluations of the Software. Ordering Activity have no rights to the Software except as explicitly granted to Ordering Activity by SunView Software in this Agreement.

(d) **Upgrades:** If the Software Ordering Activity purchased is an upgrade of a SunView Software product, Ordering Activity may Use that upgraded product only in accordance with this Agreement. If the Software is an upgrade of a component of a package of software

programs that Ordering Activity licensed as a single product, the Software may be Used and transferred only as part of that single product package and may not be separated for Use on more than one Computer. Ordering Activity may not loan, rent, lease, or otherwise transfer the original non-upgraded product to another user.

(e) Content: Any non-SunView Software materials (Third-Party Content") Ordering Activity access via the Software (on-line or otherwise) is the property of the applicable owner and may be protected by applicable copyright law. This Agreement grants Ordering Activity no rights to Third-Party Content.

Section 4 – Reserved.

Section 5 - Remedies & Limitations of Liability:

(a) Limited Warranty:

SunView Software represents and warrants that, when delivered and for a period of sixty (60) days thereafter (the "Warranty Period"), the Software (i) will materially conform to SunView Software's current documentation; (ii) will be of merchantable quality; and (iii) will be fit for the particular purpose (if any) described in this Agreement. The preceding warranty will only apply to problems reported to SunView Software during the Warranty Period and will not apply: (i) where the Software is not used in accordance with the documentation; (ii) if the Software or any part thereof has been altered or modified without the prior written consent of SunView Software; or (iii) where a defect in the Software has been caused by any of Ordering Activity's malfunctioning equipment. For any breach of this warranty, Ordering Activity's entire remedy and SunView Software's entire liability shall be limited to repair or replacement of the Software or, if such repair or replacement is inadequate as a remedy or, in SunView Software's opinion, not commercially reasonable, to a refund of the license fees paid for the Software.

THIS SECTION 5(a) SETS FORTH SUNVIEW SOFTWARE'S ENTIRE LIABILITY AND ORDERING ACTIVITY'S EXCLUSIVE REMEDIES IN RELATION TO SOFTWARE DEFECTS OR ORDERING ACTIVITY'S DISSATISFACTION WITH THE SOFTWARE.

(b) Disclaimers:

(i) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, SUNVIEW SOFTWARE, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, RELATED DOCUMENTATION AND OTHER MATERIALS AND PROFESSIONAL SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, SUNVIEW SOFTWARE DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM WITHOUT INTERRUPTION OR BE ERROR FREE, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS. ORDERING ACTIVITY ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS" AND ORDERING ACTIVITY ACCEPT THE ENTIRE RISK AS TO THE SOFTWARE'S QUALITY AND PERFORMANCE.

(ii) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SUNVIEW SOFTWARE AND ITS LICENSORS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS IN CONNECTION WITH THE SOFTWARE OR ANY SERVICE RELATED THERETO.

(iii) SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO ORDERING ACTIVITY. IN THAT EVENT, TO THE EXTENT ORDERING ACTIVITY'S JURISDICTION PERMITS SUCH LIMITATIONS, ANY IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE ORDERING ACTIVITY PURCHASED OR SUBSCRIBED TO THE SOFTWARE OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW, IF LONGER. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY HAVE OTHER RIGHTS AS WELL, WHICH MAY VARY ACCORDING TO JURISDICTION.

Section 6 - Export Controls:

None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the United States of America has embargoed goods; and/or (ii) to anyone on the United States of America's Treasury Department's list of Specially Designated Nationals or the United States of America's Commerce Department's Table of Denial Orders and/or (iii) otherwise in breach of United States laws and regulations related to exports and to all administrative acts of the US Government pursuant to such laws and regulations. By downloading and/or installing and/or Using the Software, Ordering Activity agrees to the foregoing and represent and warrant that Ordering Activity are not located in, under the control of, or a national or resident of any country or on a list in breach of this Section 6. In addition, Ordering Activity are responsible for complying with any local laws in Ordering Activity's jurisdiction which may impact Ordering Activity's right to import, export or Use the Software, and Ordering Activity represent that Ordering Activity have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

Section 7 - U.S. Government End Users:

The Software is a "commercial item," as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and the Department of Defense Federal Acquisition Regulations Sections

252.227-7014(a)(1), (5). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. The manufacturer is SunView Software Inc., 10210 Highland Manor Drive Suite 275, Tampa, FL 33610.

Section 8 – Reserved.

Section 9 - Technical Support:

SunView Software shall provide Software support and maintenance to Ordering Activity in accordance with Exhibit A attached hereto, subject to the terms below. Software support and maintenance is offered on no less than an annual basis.

Section 10 – Professional Services:

SunView Software shall perform any Professional Services as set forth in an applicable order in a professional manner in accordance with industry standards. Professional Services will be conducted at SunView Software's facility and/or at Ordering Activity's location.

Exhibit A: Support and Maintenance

SunView Software shall provide the Software support and maintenance described in this Exhibit A in order to ensure that the Software remains in good working order and operates in accordance with its documentation and specifications.

SunView Software shall advise Ordering Activity on the use of the Software and shall assist Ordering Activity in identifying and solving any problems encountered in such use and reported by Ordering Activity by rendering the following support and maintenance:

(i) Corrective maintenance. Corrective maintenance includes diagnosis and correction by SunView Software of actual errors or defects in the program codes of the Software and in the documentation. An error or defect is the failure of the Software to operate materially in accordance with the documentation and its specifications.

(ii) Perfective maintenance. Perfective maintenance includes the modification of the Software in order to improve and extend its functionality.

(iii) Releases. All permanent solutions developed for problems encountered in the Use of the Software, all corrections of errors and defects in the Software and all enhancements, improvements and modifications of the Software referred to hereinabove shall be incorporated by SunView Software as soon as reasonably possible in a release, a copy of which shall be provided to Ordering Activity as soon as it is ready for release together with the updated documentation.

A release of any particular item of the Software shall be based on the previously offered version and shall have equivalent or enhanced functionality with such corrections and amendments as SunView Software reasonably decides to include.

Ordering Activity are free to adopt a new release or to continue to Use the current release.

Following the resolution of any problems that have a material or adverse effect on Ordering Activity's use of the Software, SunView Software shall provide to Ordering Activity a report describing the apparent cause, the response time and repair time.

SyferLock Technology Corporation
917 Bridgeport Avenue
Shelton, CT 06484

EC America Rider to Product Specific License Terms and Conditions

All references to Syferlock in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, Syferlock."

Section - TERMS AND CONDITIONS FOR SYFERLOCK PRODUCTS AND SERVICES

1. Definitions

Defined terms are capitalized and have the meanings indicated in Definitions section below

2. Right to Use Software

SyferLock hereby grants to Customer a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein and in the applicable Attachment(s). SyferLock hereby grants to Customer a nonexclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, SyferLock's trademarks and trade names set forth on Attachment H hereof ("SyferLock Marks") solely for the purpose of using the Software in accordance with this Agreement. Customer shall comply with SyferLock's trademark guidelines as provided from time to time by SyferLock. Customer agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the SyferLock Marks, of its own trademark as approved in writing by SyferLock. To the extent that SyferLock will authorize any use of a composite trademark comprised out of SyferLock Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with this Agreement and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Customer's trademarks with the SyferLock Marks must maintain the distinctness of each trademark. Subject to the foregoing, the SyferLock Marks are the only trademarks and trade names that Customer is authorized by SyferLock to employ in connection with the Software and Customer agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Customer's use of the SyferLock Marks shall inure to the benefit of SyferLock. The license set forth in this Section 2 is not sub-licensable.

3. Restrictions on Use of Software

Customer's use of the Software is subject to the following restrictions. Except as expressly permitted in this Agreement, Customer shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing SyferLock's copyright notices and other SyferLock Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Customer's right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other SyferLock Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by SyferLock (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved, or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Customer are reserved by SyferLock. There are no implied rights. Customer shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the Cover page.

4. Third Parties

Customer's use and disclosure of the Software is restricted solely to its employees, professional advisors who acknowledge the confidential nature of the Software and agents and independent contractors who agree in writing to be bound by the

Confidentiality Provisions set forth in this Agreement. Customer agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Customer herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by SyferLock, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Customer shall not use the Software in any manner other than as expressly provided for in this Agreement.

5. Reserved.

a)

6. Effect of Termination or Expiration

a) Reserved.

b) Reserved.

c) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

d) Customer shall not, in advertising or otherwise, use or display any of SyferLock Marks or any name, mark, or logo that is the same as or similar to SyferLock Marks, represent itself to be a licensee of SyferLock, or in any way identify itself with SyferLock or contains any portion of a SyferLock Mark.

e) Reserved.

f) Sections 5, 6, 7(a), 7(b), 7(e), 8, 10-14, and 15 hereof, will survive termination or expiration of this Agreement. g) Reserved.

7. Inspection/Acceptance

The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("SYFERLOCK") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

8. Proprietary Rights

As between SyferLock and Customer, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Customer in connection with this Agreement. Customer acknowledges that, as between SyferLock and Customer, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Customer shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of SyferLock granting Customer the rights set forth in this Agreement, Customer agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications, enhancements, improvements, inventions, works of authorship or any suggestion Customer or any of Customer personnel or third party proposes, creates, authors or develops relating to the Software, Documentation, SyferLock Marks or any other deliverable made available by SyferLock in connection with this Agreement or any portion of any of the foregoing (collectively, the "Suggestions") are hereby assigned to SyferLock, shall be the sole and exclusive property of SyferLock and shall be considered SyferLock Confidential Information for all purposes hereof. At SyferLock's expense, Customer agrees to take any action (and to cause its personnel to take any action) SyferLock requests to perfect SyferLock's ownership in the Software and/or any Suggestion.

9. Software Maintenance and Support Services; Other Services

Customer may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. SyferLock shall provide the Standard Maintenance and Support Services described on Attachment E during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth on the Cover Page. If selected by Customer on the Cover Page, all such services will be provided by SyferLock in accordance with the terms set forth hereunder and applicable Statement(s) of Work. Customer will be entitled to receive Updates only if Customer is a paid-up Maintenance and Support Services customer at the time an Update is commercially released. Customer shall have the option to purchase Upgrades in accordance with SyferLock's pricing structure in effect at the time an Upgrade is commercially released.

10. SyferLock's Duty of Indemnification

To the extent permitted by federal law, SyferLock, at its expense, shall defend any action, suit or proceeding brought against Customer which alleges that any Software infringes any United States copyright and SyferLock shall pay damages finally awarded against Customer (including attorneys' reasonable fees), provided that (a) Customer notifies SyferLock promptly in writing of the claim, (b) SyferLock has sole control of the defense and all related settlement negotiations, and (c) Customer provides SyferLock with all requested assistance, information and authority to perform the above at SyferLock's expense. In the event that Customer's use of the Software is enjoined by a court of competent authority, SyferLock shall, at its sole option and at its expense, either: (i) procure for Customer the right to use the Software or (ii) modify the Software to avoid infringement without material impairment of its functionality or (iii) if neither of the foregoing remedies can be obtained upon terms commercially reasonable in the judgment of SyferLock, require Customer to remove and return to SyferLock the Software involved and, if Perpetual Term is selected on the Cover Page, refund Customer a portion of the price thereof as depreciated over a three (3) year life of the Software commencing on the date of delivery. The foregoing indemnity shall not apply if the alleged infringement is attributable to (i) any adjustment, enhancement, revision, development or addition to the Software based on Customer provided guidelines, requests and/or specifications, (ii) the combination of the Software and products and/or other materials not provided by SyferLock under this Agreement, (iii) if the Software is modified or altered by any person or entity other than SyferLock, (iv) if the Software is used in any way other than as set forth in the Documentation, or (v) if the Software is otherwise used outside the scope of this Agreement. THIS SECTION STATES SYFERLOCK'S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

11. Reserved

12. Limited Warranty

- a) SyferLock warrants that for a period of thirty (30) days following initial delivery of the Software to Customer ("Warranty Period"), SyferLock will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that SyferLock receives a written claim from Customer under this limited warranty within the Warranty Period. This

Warranty does not apply if Customer or any third party changes or modifies the Software without the authorization of SyferLock. SyferLock does not warrant that the Software will be error free or that all errors can be remedied.

SyferLock warrants that the services provided by SyferLock in connection with this Agreement will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be SyferLock's entire liability and Customer's sole and exclusive remedy under this warranty.

- b) THE EXPRESS WARRANTIES GRANTED UNDER THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY SYFERLOCK WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. SYFERLOCK HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR

FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, SYFERLOCK'S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS REQUIRED BY THE LOCAL LAW OF CUSTOMER. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, SYFERLOCK SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. SYFERLOCK EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF CUSTOMER OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF SYFERLOCK'S OR ANY THIRD PARTY'S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

13. Limitation of Liability

CUSTOMER'S SOLE REMEDY AND SYFERLOCK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CUSTOMER'S REMEDY SHALL BE LIMITED TO THE LESSER OF (A) THE ACTUAL MONEY DAMAGES, OR (B) AN AMOUNT NOT EXCEEDING THE SOFTWARE LICENSE FEES PAID TO SYFERLOCK BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL SYFERLOCK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF SYFERLOCK, INCLUDING ITS EMPLOYEES, AGENTS, PARTNERS, REPRESENTATIVES, OR SUBCONTRACTORS, BE LIABLE FOR ANY (A) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (B) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, INCIDENTAL, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF SYFERLOCK COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF SYFERLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY OTHER THAN THOSE DETERMINED TO BE INDEMNIFIABLE CLAIMS UNDER SECTION 10 BY AN UNAPPEALABLE COURT RULING AND ONLY TO THE EXTENT PROVIDED FOR ABOVE, OR (D) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-SYFERLOCK PRODUCT, SERVICES OR DELIVERABLES. CUSTOMER RECOGNIZES THAT THE FEES HEREUNDER ARE BASED IN PART ON THE LIMITED WARRANTY AND LIMITATION OF LIABILITY AND REMEDIES SET FORTH HEREIN.

14. Confidentiality

Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to Confidential Information. Each party agrees to maintain in confidence and use only as expressly permitted in this Agreement all Confidential Information received from the other, both orally and in writing, provided that the parties' obligations of nondisclosure under this Agreement shall not apply to Confidential Information which the receiving party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party in lawful possession of such Confidential Information; or (iv) is independently developed by the receiving party without reference to Confidential Information. In the event a subpoena or other legal process is served upon a party receiving Confidential Information of the other party hereunder that, pursuant to the requirement of a governmental agency or law of the United States or any state thereof (or any governmental or political subdivision thereof), requires the disclosure of such Confidential Information, the receiving party will notify the disclosing party promptly upon receipt of such subpoena or other request for legal process, and will cooperate with the disclosing party, at the disclosing party's expense, in any lawful effort by the disclosing party to contest the legal validity or scope of such subpoena or other legal process.

15. Miscellaneous

a) Assignment

Customer may not sublicense, assign (by operation of law or otherwise) or otherwise transfer this Agreement or any license or any right, duty or obligation under this Agreement without SyferLock's prior written consent, and any attempt to do so shall be null and void. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the parties, their successors and assigns.

b) Export Control

Customer acknowledges that the export of any Software is or may be subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

c) U.S. Government Restricted Rights

Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

d) License subject to Licensor's Rights

Customer acknowledges that portions of the Software may have been licensed to SyferLock by one or more third parties. All rights and obligations provided by SyferLock to Customer under this Agreement shall be limited to the extent that such underlying rights and obligations have been provided to SyferLock. e) Reserved

f) Reserved

g) Waiver

A failure or delay by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. Any waiver by either party of any right under this Agreement shall not constitute a waiver of such right in the future. All rights and remedies evidenced hereby are in addition to and cumulative to rights and remedies available at law or equity or otherwise available under any other contract.

h) Severability

If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly affects the parties' intent in entering this Agreement. i) Force Majeure

Excluding the payment of money, neither party will be deemed in default of any obligation hereunder nor be liable for any failure or delay in performance which results directly or indirectly from any cause beyond its reasonable control, including without limitation, "Acts of God," delays or failures in the Internet or related carriers and third-party equipment, acts of civil or military authority, strikes, fire, theft, delays by suppliers, or action or inaction by the other party or any third party.

j) Reserved

k) Reserved

l) Compliance with Law

Customer is solely responsible for ensuring that its use of the Software is in compliance with all foreign, federal, state, and local laws and regulations, and Customer represents and warrants to SyferLock that it will comply with this subsection.

m) Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

n) Reserved

o) Reserved

p) No Third Party Beneficiaries

Except as set forth herein, no person or entity who is not a party to this Agreement shall derive any rights whatsoever hereunder as a third party beneficiary of this Agreement.

q) Reserved

DEFINITIONS

"Agreement" means this License Agreement, together with agreed upon terms in the ordering documents.

"Confidential Information" means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled "confidential" or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled "confidential" or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, the terms of this Agreement, information relating to the Company's products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, customer data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

"Cover Page" means the quote.

"CPU" means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Customer will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed on the quote as a single CPU.

"Documentation" means end user materials, including manuals and training materials, in any form or medium, provided by SyferLock for use with the Software.

"Effective Date" means the effective date indicated on the Cover Page.

"Maintenance and Support Services" means the services provided to Customer by SyferLock in accordance with the terms set forth herein.

"Response (Time)" means contact to Customer via phone or an electronic means.

"Resolution (Time)" means a corrective measure(s) to address an Error.

"Server" or "Enterprise Server" means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

"Service Bureau" means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

"Severity Level" means a reported anomaly or error isolated to software, and as defined herein.

"Severity Level 1 (SL1)" means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

"Severity Level 2 (SL2)" means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

“Severity Level 3 (SL3)” means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

“Severity Level 4 (SL4)” means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from SyferLock, as specified on the Cover Page.

“Update” or “Upgrade” means an improved and enhanced version of the Software released by SyferLock subsequent to the version licensed by Customer hereunder that SyferLock may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that SyferLock, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

Section - STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES

E-1) Maintenance and Support Services

SyferLock will provide Customer with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Customer as specified on the Cover Page; SyferLock is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SyferLock shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Customer’s neglect or misuse of the Software, (b) modification of the Software by a person or entity other than SyferLock without the prior written consent of SyferLock, or (c) any other cause beyond the reasonable control of SyferLock. SyferLock shall not be obligated to respond to requests for support from any person or entity other than a representative of Customer’s IT department that have been pre-approved in writing by SyferLock. SyferLock shall have no liability to any third party with respect to the Maintenance and Support Services.

E-2) Versions

Upon commercial release of a new Version, SyferLock shall provide such Version to paid-up Maintenance and Support Services Customers.

E-3) Error Correction

Customer may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide SyferLock all information necessary for diagnosis of the Error. SyferLock will use commercially reasonable efforts to contact Customer with respect to such reported Error within one (1) business day following the business day upon which it was submitted. SyferLock shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Customer possible custom professional services to resolve Customer’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

E-4) Reserved

E-5) Reserved

E-6) SyferLock Personnel

In the performance of the Maintenance and Support Services, SyferLock reserves the right to determine the assignment of SyferLock personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of SyferLock hereunder shall be restricted or prevented from performing services for others that are similar to the services provided under this Agreement.

E-7) On-Site Visits

For purposes of performing the Maintenance and Support Services, Customer shall permit authorized SyferLock service engineers to inspect periodically during normal business hours Customer’s computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Customer). If SyferLock is unable by remote telephone or on-line support to address an Error, then SyferLock, at its sole discretion, may dispatch a software engineer to Customer’s site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Customer. Dispatch shall be within two (2) business days after SyferLock has determined at its sole discretion that telephone or on-line assistance is not sufficient. If Customer requests an on-site software support visit and SyferLock reasonably determines that the reported problem is not the responsibility of SyferLock, Customer shall work with SyferLock to determine the costs reasonably incurred by the SyferLock personnel in making such visit.

Deliverable	Support
Support Provided	Second Tier*, On-Line and Phone Support during Support Hours
Support Hours	Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. SyferLock will reply to Customer’s call or email/on-line Error report within the time frames set forth in Section E-3 above.
Staff	Access to technical support staff
Diagnostics & Resolution	Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Customer IT staff identified pre-approved for such purpose in writing by SyferLock. It is agreed and clarified that First Tier Support (defined as support request

originating from end users) shall be rendered by Customer personnel trained for such purpose and that no First Tier Support shall be rendered by SyferLock.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

SYFERLOCK TECHNOLOGY CORPORATION

SYFERLOCK TECHNOLOGY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions

Defined terms are capitalized and have the meanings indicated in the Definitions section hereunder.

2. Right to Use Software

Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein. Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, Contractor's trademarks and trade names set forth ("Contractor Marks") solely for the purpose of using the Software in accordance with these terms. Ordering Activity agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the Contractor Marks, of its own trademark as approved in writing by Contractor. To the extent that Contractor will authorize any use of a composite trademark comprised out of Contractor Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with these terms and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Ordering Activity's trademarks with the Contractor Marks must maintain the distinctness of each trademark. Subject to the foregoing, The Contractor Marks are the only trademarks and trade names that Ordering Activity is authorized by Contractor to employ in connection with the Software and Ordering Activity agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Ordering Activity's use of the Contractor Marks shall inure to the benefit of Contractor. The license set forth in this Section 2 is not sub-licensable.

3. Restrictions on Use of Software

Ordering Activity's use of the Software is subject to the following restrictions. Except as expressly permitted in these terms, Ordering Activity shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing Contractor's copyright notices and other Contractor Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Ordering Activity's right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other Contractor Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by Contractor (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Ordering Activity are reserved by Contractor. There are no implied rights. Ordering Activity shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the quote.

4. Third Parties

Ordering Activity's use and disclosure of the Software is restricted solely to its employees, agents, consultants and/or independent contractors (collectively referred to as "employees," hereinafter) who acknowledge the confidential nature of the Software and agents, consultants and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth herein. Ordering Activity agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Ordering Activity herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by Contractor, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Ordering Activity shall not use the Software in any manner other than as expressly provided for herein these terms.

5. Terms of Agreement Termination

The Order shall commence upon the Effective Date and, unless terminated in accordance with the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders. and shall remain in effect for the term specified on the Order (either perpetual or yearly subscription, each as defined below).

- a) Yearly Subscription Term. If yearly subscription term is ordered, this License shall have an initial term of 12 (twelve) months.
- b) Perpetual Term. If perpetual term is ordered, the term of this License shall be perpetual with respect to the version of the Software licensed hereunder.

6. Effect of Termination or Expiration

- a) Each party shall immediately surrender all rights, licenses, and privileges granted under this Attachment A.
- b) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

7. Reserved

8. Proprietary Rights

As between SyferLock and Ordering Activity, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Ordering Activity in connection with these terms. Ordering Activity acknowledges that, as between SyferLock and Ordering Activity, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Ordering Activity shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of Contractor through SyferLock granting Ordering Activity the rights set forth herein, Ordering Activity agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications and enhancements.

9. Software Maintenance and Support Services; Other Services

Ordering Activity may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. Contractor through SyferLock shall provide the Standard Maintenance and Support Services described herein below during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth in the GSA Customer Purchase Order.. If selected by Ordering Activity, all such services will be provided by Contractor in accordance with the terms herein below (Software Maintenance and Support Services), and applicable Statement(s) of Work. Ordering Activity will be entitled to receive Updates only if Ordering Activity is a paid-up Maintenance and Support Services Ordering Activity at the time an Update is commercially released. Ordering Activity shall have the option to purchase Upgrades pursuant to the execution of a new GSA Customer Purchase Order.

10. Reserved

11. Reserved

12. Limited Warranty

a) Contractor warrants that for a period of thirty (30) days following initial delivery of the Software to Ordering Activity ("Warranty Period"), Contractor will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that Contractor receives a written claim from Ordering Activity under this limited warranty within the Warranty Period. This Warranty does not apply if Ordering Activity or any third party changes or modifies the Software without the authorization of Contractor. Contractor does not warrant that the Software will be error free or that all errors can be remedied. Contractor warrants that the services provided by Contractor in connection with these terms will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be Contractor's entire liability and Ordering Activity's remedy under this warranty.

b) THE EXPRESS WARRANTIES GRANTED HERUNDER ARE THE ONLY WARRANTIES MADE BY CONTRACTOR WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, CONTRACTOR'S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THESE TERMS, EXCEPT AS REQUIRED BY FEDERAL LAW.. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF ORDERING ACTIVITY OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF CONTRACTOR'S OR ANY THIRD PARTY'S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS.

13. Reserved

14. Reserved

15. Miscellaneous

a) Reserved

b) Export Control

Ordering Activity acknowledges that the export of any Software is or may be subject to export or import control and Ordering Activity agrees that any Software or the direct or indirect product thereof will not be exported (or re exported from a country of installation) directly or indirectly, unless Ordering Activity obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

c) U.S. Government Restricted Rights

Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

d) License subject to Licensor's Rights

Ordering Activity acknowledges that portions of the Software may have been licensed to Contractor by one or more third parties. All rights and obligations provided by Contractor to Ordering Activity hereunder shall be limited to the extent that such underlying rights and obligations have been provided to Contractor.

e) Reserved

f) Reserved.

g) Reserved

h) Reserved

i) Reserved

- j) Reserved
- k) Reserved
- l) Reserved
- m) Reserved
- n) Reserved
- o) Reserved
- p) Reserved

DEFINITIONS

"Agreement" means this License Agreement.

"Confidential Information" means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled "confidential" or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled "confidential" or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, , information relating to the Company's products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, Ordering Activity data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

"Cover Page" means the first two pages of this Agreement.

"CPU" means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Ordering Activity will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed in ordering documents as a single CPU.

"Documentation" means end user materials, including manuals and training materials, in any form or medium, provided by Contractor for use with the Software.

"Effective Date" means the effective date indicated on the quote.

"Maintenance and Support Services" means the services provided to Ordering Activity by Contractor in accordance with the terms set forth herein.

"Response (Time)" means contact to Ordering Activity via phone or an electronic means.

"Resolution (Time)" means a corrective measure(s) to address an Error.

"Server" or "Enterprise Server" means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

"Service Bureau" means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

"Severity Level" means a reported anomaly or error isolated to software, and as defined and set for the in section G-8 of herein.

"Severity Level 1 (SL1)" means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

"Severity Level 2 (SL2)" means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

"Severity Level 3 (SL3)" means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

"Severity Level 4 (SL4)" means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

"Severity Level 5 (SL5)" means an enhancement request.

"Software" means one or more of the commercially available software products, available from Contractor, as specified on the Cover Page.

"Update" or "Upgrade" means an improved and enhanced version of the Software released by Contractor subsequent to the version licensed by Ordering Activity hereunder that Contractor may make available to licensees of the Software for an additional fee.

"Version" means any update, version, release, revision, patch, bug fix or modified form of the Software that Contractor, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

"Warranty Period" has the meaning set forth in Section 12(a).

STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES

E-1) Maintenance and Support Services

Contractor through SyferLock will provide Ordering Activity with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Ordering Activity as specified on the Cover Page; Contractor is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. Contractor shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Ordering Activity's neglect or misuse of the Software, (b) modification of the Software by a person or entity other than Contractor without the prior written consent of Contractor, or (c) any other cause beyond the reasonable control of Contractor. Contractor shall not be obligated to respond to requests for support from any person or entity other than a representative of Ordering Activity's IT department that have been pre-approved in writing by Contractor. Contractor shall have no liability to any third party with respect to the Maintenance and Support Services.

E-2) Versions

Upon commercial release of a new Version, Contractor through SyferLock shall provide such Version to paid-up Maintenance and Support Services Ordering Activities.

E-3) Error Correction

Ordering Activity may call to report an "Error" in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide Contractor through SyferLock all information necessary for diagnosis of the Error. Contractor will use commercially reasonable efforts to contact Ordering Activity with respect to such reported Error within one (1) business day following the business day upon which it was submitted. Contractor shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Ordering Activity possible custom professional services to resolve Ordering Activity's request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

E-4) Term

E-5) The initial term of Maintenance and Support Services shall be one year (the "Term") commencing on the expiration of the Warranty Period if Ordering Activity has elected a perpetual term on the Cover Page, and commencing on the Effective Date if Ordering Activity has elected a Yearly Subscription term on the Cover Page. In the event that Ordering Activity elects to reinstate Maintenance and Support Services following termination of such services by Ordering Activity, execution of a new GSA Customer Purchase Order will be required.

E-6) Contractor Personnel

In the performance of the Maintenance and Support Services, Contractor through SyferLock reserves the right to determine the assignment of Contractor personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of Contractor hereunder shall be restricted or prevented from performing services for others that are similar to the services provided hereunder.

E-7) On-Site Visits

For purposes of performing the Maintenance and Support Services, Ordering Activity shall permit authorized Contractor through SyferLock service engineers to inspect periodically during normal business hours Ordering Activity's computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Ordering Activity). If Contractor is unable by remote telephone or on-line support to address an Error, then Contractor, at its sole discretion, may dispatch a software engineer to Ordering Activity's site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Ordering Activity and shall be billed to Ordering Activity in accordance with the Federal Joint Travel Regulations. Dispatch shall be within two (2) business days after Contractor has determined at its sole discretion that telephone or on-line assistance is not sufficient.

Deliverable Support

Support Provided Second Tier*, On-Line and Phone Support during Support Hours

Support Hours Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. Contractor will reply to Ordering Activity's call or email/on-line Error report within the time frames set forth in Section E-3 above.

Staff Access to technical support staff

Diagnostics & Resolution Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Ordering Activity IT staff identified pre-approved for such purpose in writing by Contractor. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Ordering Activity personnel trained for such purpose and that no First Tier Support shall be rendered by Contractor.

SyncDog, Inc.
1818 Library Street, Suite 500
Reston, VA 20190

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached SyncDog, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
14. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
 SYNCDOG, INC

SYNCDOG, INC. LICENSE, WARRANTY AND SUPPORT TERMS

SYNCDOG LICENSE AGREEMENT

1. SyncDog Software; Ordering.

1.1 SyncDog Software. SyncDog licenses its software products on a subscription basis. Software is made available as a software-only (or "virtual") solution, as a hosted solution, or on a physical appliance. Ordering Activity's rights to use SyncDog software apply only to the SyncDog software licensed under an applicable Order.

1.2 Reserved.

1.3 Delivery. For downloadable versions of the SyncDog software, Ordering Activity may download the software from a link provided by SyncDog. For hosted versions of the SyncDog Solution, access shall be provided through a password-protected web interface.

2. Definitions. Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

"**SyncDog Solution**" means the object code versions of the SyncDog software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open Source Software, which is provided pursuant to Section 3.5.

"**Affiliate**" means an entity, which directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement.

"**Client Software**" means the object code versions of the desktop client software for the licensed SyncDog Solution.

"**Designated User**" means the number of users for whom Ordering Activity has purchased rights to use the SyncDog Solution, as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 5.3 below. Designated Users may consist of: (i) employees and independent contractors of Ordering Activity and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Ordering Activity and its Affiliates.

"**Documentation**" means SyncDog's standard written materials and specifications for the SyncDog Solution licensed by Ordering.

"**Effective Date**" means (i) for Orders submitted to SyncDog, the date that SyncDog accepts the Order; or (ii) for orders submitted to a Channel Partner on a form other than an SyncDog Order form, the date SyncDog makes the software available to Ordering Activity for download or, for software provided on a physical appliance, the date of shipment.

"**Hardware**" means computer equipment, if any, purchased from SyncDog by Ordering.

"**Hosted Services**" means the remote access and use of a hosted version of the SyncDog Solution as hosted by SyncDog.

"**License Term**" means the subscription period for use of the SyncDog Solution, as identified on the applicable Order.

"**Maintenance Support Services**" means the support services provided by SyncDog as described in Section 4.

"**Release**" means a version of the SyncDog Solution for which SyncDog charges a separate fee.

"**Server Software**" means the object code server software version of the SyncDog Solution, as identified on the applicable Order.

"**Update**" means additions, upgrades, or modifications to the SyncDog Solution. Updates do not include Releases.

3. License Terms.

3.1 License Grant. SyncDog hereby grants to Ordering Activity during the License Term, a non-exclusive, non-transferable and non-sublicensable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users; and (b) use, access, and for SyncDog not hosted by SyncDog, copy the Server Software on supported environments for up to the number of copies identified on the Order for Ordering Activity's internal business purposes.

3.2 License Restrictions. Ordering Activity shall not copy the SyncDog Solution except to make a reasonable number of copies for the purposes of security back-up, relocation or disaster recovery; provided, however, that Ordering Activity may make and use the number of copies of Client Software that it deems appropriate unless the number of copies of Client Software is restricted as set forth on the applicable Order. The SyncDog Solution may not be modified, disclosed, reverse-engineered, disassembled, or decompiled except and to the extent allowed by applicable law. Ordering Activity shall not

transfer, sell, license, sublicense, outsource, rent or lease the SyncDog Solution or use it for service bureau or other third-party use. All rights not expressly granted hereunder are reserved. Ordering Activity is solely responsible and liable for the use of and access to the SyncDog Solution by Designated Users and for all files and data transmitted, shared, or stored using the SyncDog Solution. Ordering Activity acknowledges and agrees that the licenses granted herein are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SyncDog with respect to future functionality or features.

- 3.3 **Ownership.** All right, title, and interest, including without limitation all intellectual property rights, in and to the SyncDog Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of SyncDog and its licensors. Ordering Activity shall not remove, and shall reproduce on any permitted copies, all proprietary, copyright, trademark and trade secret notices contained in or placed upon the SyncDog Solution. Ordering Activity will take reasonable precautions (including the precautions used for Ordering Activity's own confidential information) to prevent the unauthorized use or disclosure of the SyncDog Solution, the Documentation, or the results of any performance or benchmark tests of the SyncDog Solution.

4. **Maintenance Support Services.** SyncDog provides Maintenance and Support Services for the License Term at no additional charge. As part of Maintenance Support Services, SyncDog will make available to Ordering Activity all Updates that SyncDog makes generally available to its other Ordering Activities.

5. **Reports.**

5.4 **Automated Reporting.** The Server Software periodically transmits technical data to SyncDog. That data does not include the content of any emails or attachments, file names or any personally identifiable information. The transmitted information contains aggregate non-personal usage information for each day the SyncDog Solution is in use, including but not limited to: (i) the number and type of messaging senders and recipients, (ii) account usage information, (iii) technical data about messaging transmissions and management; and (iv) the type of SyncDog Solution features used and related data. Ordering Activity will not in any way attempt to prevent the transmission or delivery of such usage data. SyncDog uses such data only for SyncDog's own internal business purposes. SyncDog only discloses such data (a) in an aggregated form with data from other Ordering Activities in which neither Ordering Activity's identity nor that of Designated Users are revealed, or (b) as required by applicable law.

6. **Reserved.**

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7. **Limited Warranties and Disclaimer.**

- 7.1 **Limited SyncDog Solution and Hardware Performance Warranty.**

- (a) **Warranty.** SyncDog warrants to Ordering Activity that: (i) the media on which the SyncDog Solution is furnished under normal use will be free from material defects in materials and workmanship for a period of thirty (30) days after the delivery date; (ii) the Hardware sold to Ordering Activity, if any, will be free from defects in materials and workmanship for a period of one (1) year from the date it is furnished to Ordering Activity; and (iii) the SyncDog Solution and Open Source Software will operate in substantial conformance with the Documentation for a period of thirty (30) days after the delivery date.

- (b) **Remedy.** Any warranty claim must be made by written notice to SyncDog within the applicable warranty period. SyncDog's liability and Ordering Activity's remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media, Hardware or SyncDog Solution that does not meet SyncDog's limited warranty and if SyncDog is unable to repair or replace defective components of the SyncDog Solution within a reasonable period of time (not to exceed thirty (30) days from SyncDog's receipt of Ordering Activity's notice), this Agreement shall terminate, in which case: (i) SyncDog shall (a) refund all license fees received by SyncDog for the SyncDog Solution (and Hardware fees, if any); and (b) the fees received by SyncDog for the unexpired term of Maintenance Support Services, and (ii) Ordering Activity shall (a) uninstall and destroy the nonconforming SyncDog Solution and certify in writing that it has done the same; and (b) return the Hardware, if any, at SyncDog's expense. SyncDog is not liable under any warranty or otherwise for defects or liability caused by the use of the SyncDog Solution or Hardware in any manner or for any purpose other than that for which it was licensed to Ordering Activity, or for causes not within SyncDog's reasonable control. Warranties are void if failures are caused in whole or in part by accident, abuse, misuse, or modifications not authorized in writing by SyncDog.

- 7.2 **Virus Protection.** SyncDog warrants to Ordering Activity that, to the best of SyncDog's knowledge as of the date of delivery, the SyncDog Solution will be free from any viruses, spyware, trojans, or disabling or malicious code, provided that Server Software includes disabling mechanisms that prevent access to the Server Software following expiration of the License Term.

- 7.3 **Limited Services Warranty.** SyncDog warrants that for a period of thirty (30) days following installation or professional services, such services will be provided in a professional and workmanlike manner consistent with generally accepted industry standards. As Ordering Activity's sole and exclusive remedy and SyncDog's sole and exclusive liability for breach of the foregoing warranty, SyncDog will, at its sole option and expense, and provided that SyncDog is notified of any such breach during the warranty period,

re-perform the services, or if SyncDog is unable to perform the services as warranted, refund the fees paid to SyncDog for the services.

- 7.4 Disclaimer. THE EXPRESS LIMITED WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SYNCDOG DOES NOT WARRANT THAT THE USE OF THE SYNCDOG SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. SYNCDOG. MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS OR SERVICES PROVIDED BY ITS CHANNEL PARTNERS OR ANY HOSTED SERVICES PROVIDERS, AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACT OR OMISSION OF ANY CHANNEL PARTNER OR HOSTED SERVICES PROVIDERS. NO CHANNEL PARTNER OR HOSTED SERVICES PROVIDER SHALL HAVE ANY AUTHORITY TO BIND SYNCDOG TO ANY TERMS OR CONDITIONS OTHER THEN THOSE EXPRESSLY SET FORTH HEREIN

8. **Reserved.**

9. **Reserved.**

10. **Reserved.**

11. Government Licensing. If the SyncDog Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the SyncDog Solution and accompanying materials constitute "commercial computer software" and "commercial computer software documentation" under paragraphs 252.227.14 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") or any successor regulations, and the Government is acquiring only the usage rights specifically granted in this Agreement; (ii) the SyncDog Solution constitutes "restricted computer software" under paragraph 52.227-14 of the Federal Acquisition Regulations ("FAR") or any successor regulations and the government's usage rights are defined in this Agreement and the FAR.

Symantec
420 N. Mary Avenue
Sunnyvale, CA 94085

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Symantec Systems** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Symantec

Symantec LICENSE, WARRANTY AND SUPPORT TERMS

This GSA License Agreement ("Agreement") is entered into by an authorized representative of the party entering into this Agreement ("Customer") and the Symantec Systems, Inc. ("Symantec") and is effective upon Customer's execution of an applicable Purchase Order ("Order").

1. License Terms.

1.1 Introduction. Any products and services made available to Customer by Symantec ("Products") under this Agreement may be, or may include, a physical appliance or other hardware ("Hardware"), software ("Software") and/or proprietary data ("BC Data"). Software and/or BC Data, whether embedded in memory or otherwise incorporated or loaded onto Hardware or made available via electronic delivery, are hereafter referred to as "Licensed Products".

1.2 License. Subject to the terms and conditions of this Agreement, Symantec grants to Customer, during the applicable license term, a non-transferable, nonexclusive, worldwide license, subject to additional limitations set forth in this Section 1, to use the Licensed Products solely: (i) for internal purposes; (ii) in accordance with the Product license type (e.g., subscription or perpetual) and user type (for which the applicable fees have been paid) as set forth in the Purchase Order. Symantec's current Product Licensing guide in effect as of July 1, 2014, is attached hereto as Exhibit A, which sets forth the license type and any specific restrictions associated with the Products.

1.3 Ownership. The Products are proprietary to Symantec or its licensors or suppliers. Customer acknowledges and agrees that: (a) the Products are protected under U.S. and international copyright and other intellectual property laws; (b) Symantec and its licensors retain all copyrights and other intellectual property rights in the Products; (c) there are no implied licenses under this license and any rights not expressly granted to Customer hereunder are reserved by Symantec; (d) Customer acquires no ownership or other interest (other than Customer license rights set forth above in Section 1.2) in or to the Licensed Products or any Hardware loaned to Customer; and (e) BC Data is confidential information of Symantec. Customer agrees that any suggestions, comments or other feedback provided by Customer to Symantec or its licensors with respect to the Products ("Feedback") shall not be deemed to constitute confidential information of Customer or impose any confidentiality obligations on Symantec. Symantec shall be free to use, disclose, reproduce, license or otherwise distribute and exploit anonymized Feedback without any obligation, restriction or duty to account.

1.4 License Restrictions. Customer will not (a) copy the Licensed Products (except for a reasonable number of copies for back-up purposes), (b) modify, create derivative works of or translate the Licensed Products, (c) publish, distribute, rent, lease, sell, sublicense, assign or otherwise transfer the Products or any part thereof, (d) use or permit use of the Products for purposes of application development, (e) remove or obscure any Symantec or licensors' copyright, trademark or other proprietary notices or legends from any portion of the Products or any associated documentation, (f) modify, block, circumvent or otherwise interfere with any authentication, license key or security measures in the Products, (g) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the Products (the interface information necessary to achieve interoperability of the Licensed Products with independently created computer programs will be provided by Symantec in the required jurisdictions, if requested, subject to the execution of a new GSA Customer Purchase Order, (h) use or permit use of the Products for on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or aircraft communications systems, air traffic control, life support systems, human implantation, nuclear facilities or systems or weapons systems, or any other application known to Customer where product failure would lead to loss of life or catastrophic property damage, in which the failure of the program could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"), (i) permit any Product export, re-export, download, resale or transfer, directly or indirectly: (x) into (or to a national, resident or government of) any prohibited destination or other countries subject to U.S. trade embargoes imposed by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) from time to time) or other destination for which specific authorization would otherwise be required under the Export Administration Regulations (EAR) administered by the US Department of Commerce's Bureau of Industry and Security (BIS) or other applicable laws, or (y) to any person identified on the OFAC List of Specially Designated Nationals and Blocked Persons, the BIS Denied Parties List, BIS Entity List or BIS Unverified List (see: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>), or (j) use the Products for any proliferation or terrorist-related end-use. In addition, with respect to BC Data, Customer will not (i) repackage, redistribute, divert, license, sublicense, rent, disclose or resell BC Data to, or for the benefit of, any third party, (ii) use the BC Data on behalf of third parties, other than duly authorized employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) including through file sharing, hosting, application services provider, service bureau, or any other type of service), (iii) use the BC Data other than in connection with the authorized use of Products, (iv) display the BC Data on any web site or application, (v) use the BC Data to develop products or for any other purposes not described in the documentation or (vi) allow the BC Data to become subject to any lien.

1.5 License Type Restrictions. If Symantec provides a Licensed Product that is (i) embedded, incorporated or loaded onto Hardware or (ii) made available for download to designated Hardware, then the license is restricted to use on that Hardware and subject to any additional applicable usage based restrictions. Licenses based on usage such as per computer, per node, per user (concurrent, active, authorized or other) or per instance are restricted to the terms of the applicable usage license as such terms are defined in the associated documentation. If a Licensed Product is licensed for a specified term or on a subscription basis, rather than on a perpetual basis, then Customer is only permitted to use such Licensed Product during the applicable term. If a Licensed Product is provided to Customer for evaluation, the license term shall commence upon Symantec's shipment (for Hardware and Software thereon) or electronic delivery (for Software downloaded from Symantec) of the Product, and shall last for the duration of the license set by Symantec or, if none was set, sixty (60) days. If a Licensed Product is provided under a subscription and is provided with loaned Hardware, the license term shall commence upon Symantec's shipment (for Hardware and Software thereon) or electronic delivery (for Software downloaded from Symantec) of the Product, and shall last for the duration of the subscription term.

1.6 Registration Requirements. Symantec may require registration in order to establish license entitlements for certain Products. Within sixty (60) days after the date a Product is first installed ("Registration Period"), Customer must complete registration requirements as instructed by the Products in order to continue to use all of the features of the Product. If Customer fails to complete the registration

requirements prior to the expiration of the Registration Period, Product features may become inoperable and Customer may be unable to use such features until Customer has completed registration.

1.7 Support. Any updates, upgrades and bug fixes to the Products are available through the separate purchase of support services.

1.8 Loaned Products. Symantec retains all ownership rights to loaned Products. Customer will safeguard all loaned Products, will protect them from possible damage, will not loan them to others, and will not allow any lien to be imposed upon them. If there is any damage to a loaned Product beyond normal wear or if a loaned Product is lost or stolen, Customer will be liable for the costs of repair or replacement.

2. Audit Rights. Subject to Government security requirements, Customer agrees to maintain and make available to Symantec accurate and complete records of Customer's installation/use of the Products for periodic audit as requested by Symantec during reasonable business hours. In addition, Customer acknowledges and agrees that Symantec may conduct periodic audits, to verify Customer's installation, deployment and usage of the Licensed Products. If any such audit should disclose any unlicensed usage by the GSA Customer, Symantec will provide prompt notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

3. Data.

3.1 Communication between Products and Symantec. Certain Products may require (or be pre-configured for) communication with Symantec, or the delivery of information to Symantec about the Product (e.g., IP address, serial number, application identification, and other similar data), either upon installation or periodically. Subject to Government security requirements, Customer hereby consents to such communication and transmission of information.

3.2 Consent to Use of Data. Customer agrees that Symantec may collect, maintain, process and use diagnostic, technical, usage, authentication, location and other information, including but not limited to information about the Product, system and related peripherals, which is gathered periodically to facilitate the provision of services, Software updates, Product support and other services, to verify compliance with the terms of this Agreement, to comply with legal, governmental or contractual terms, and to otherwise analyze and improve Symantec's products and services.

3.3 Safeguarding Personally Identifiable Information. If and when Customer submits any web or application use data to Symantec, Customer shall do so without submitting any information identifying any particular individual who attempted to access or actually accessed a specific URL address or application or any other data that might identify any particular user.

4. Customer's Use of Products. Customer represents, warrants and covenants that:

4.1 Privacy Rights. Customer will take all appropriate measures to avoid violating any privacy rights of individuals in connection with Customer's use of the Products.

4.2 Notice to End Users. As between Symantec and Customer, Customer shall have the sole obligation to provide notices to users of the Products that their use of Customer's computers, electronic appliances and devices (and those of users on Customer's network) may be monitored, inspected, decrypted, and/or re-encrypted and that the users should have no expectation of privacy or security when accessing the Internet or other applications.

4.3 [Intentionally Omitted].

5. Embedded Third Party Products. Certain components of the Products may incorporate third-party software programs, data and/or libraries ("Third Party Components").

6. Open Source Software. Certain of the Products may include open source software. Notwithstanding any clause herein, all open source software is provided WITHOUT ANY WARRANTY INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Symantec will make available the required source code for the applicable open source software in response to Customer's request emailed to opensource@Symantec.com.

7. Commercial Third Party Applications. As a convenience to Customer, Symantec may from time to time provide a copy of, or access to, third party products that are not available for licensing from Symantec ("Commercial Third Party Applications"), and which must be licensed by Customer directly from the applicable vendor of that Commercial Third Party Application. This Agreement does not create any right for Customer to use or access in any way such Commercial Third Party Applications. SYMANTEC MAKES NO WARRANTIES AND ASSUMES NO LIABILITY WITH RESPECT TO COMMERCIAL THIRD PARTY APPLICATIONS.

8. Export Control; Government Regulations. Customer hereby acknowledges and agrees that the Products, documents, technical data and any other materials delivered under this Agreement may be subject to U.S. export control and trade sanctions laws, regulations, legislative and regulatory requirements, rules and licenses, ("Export Control and Sanctions Rules"). Customer shall comply with the Export Control and Sanctions Rules including but not limited to the specific regulatory prohibitions of OFAC and the EAR as referenced in Section 1.4(i) herein and agrees that it alone is responsible for ensuring its compliance with Export Control and Sanctions Rules. Customer shall not do anything that would cause Symantec to be in breach of the Export Control and Sanctions Rules. As defined in FAR section 2.101, DFARS section 252.227-7014(a)(1) and DFARS section 252.227-7014(a)(5) or otherwise, all Licensed Products and associated documentation provided in connection with this Agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFARS 252.227.7015 "Technical Data-Commercial Items" (Jun. 2013), FAR 52.227-14 "Rights in Data" (Dec. 2007),d FAR section 12.212, and other applicable DFARS provisions any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the Government shall be governed solely by the terms of this Agreement.

9. **Termination.** When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Symantec shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any non-appealable decision of the Contracting Officer.

10. **Effect of Termination.** Upon termination of this Agreement pursuant to the FAR, the Schedule Pricelist and any applicable Order, Customer agrees to cease all use of the Products and associated documentation, installed or otherwise, and within a reasonable time after termination, verify in writing to Symantec (if requested by Symantec) that the Licensed Products have been uninstalled, and for Hardware (e.g., loaned Hardware), return the Hardware to Symantec by using an RMA number obtained from Symantec or through its authorized reseller.

11. **Warranties and Disclaimer.**

11.1 **Hardware.** Symantec warrants that Hardware will be free from material defects in manufacturing and materials and perform substantially in conformance with their published specifications in the documentation for a period of twelve (12) months from shipment. Customer's exclusive remedy and Symantec's sole liability for breach of this warranty is that Symantec will repair or replace any such non-conforming or defective Hardware. If the Hardware fails during the warranty period, Customer shall promptly notify its reseller of the warranty claim for processing through Symantec via standard RMA Procedures as set forth in the attached Exhibit B, and Symantec will repair or replace the Product in accordance with the applicable warranty procedures. Symantec warrants replacement Hardware for a period of ninety (90) days from shipment. Prior to returning any Hardware to Symantec, Customer shall completely erase all of Customer's confidential information from any storage media. Replacement products and parts, including parts used in hardware repair, may be new or refurbished in Symantec's sole discretion. The warranties set forth herein shall not apply in the event of improper installation, use other than in accordance with the instructions in the associated documentation, or unauthorized modification, alteration, addition or attempts to repair the Hardware.

11.2 **Software.** Symantec warrants that Software will substantially conform to the published specifications contained in the associated documentation for a period of ninety (90) days from the time the Software is shipped or made available for download to Customer. At Symantec's own expense and as its sole obligation and Customer's exclusive remedy for any breach of the foregoing warranty, Symantec shall use commercially reasonable efforts or endeavors to remedy any significant reproducible error in the Software that is reported to Symantec within the warranty period that Symantec can reasonably identify and confirm. The warranty set forth herein shall not apply in the event of improper installation, use other than in accordance with the instructions in the documentation, or unauthorized modification, alteration, addition or attempts to repair the Software.

11.3 **Services and BC Data.** Symantec makes no warranty with respect to Services or any BC Data.

11.4 **Reseller Warranties.** In the event that a Symantec reseller provides any additional or separate warranties or commitments with respect to the Products, such warranties are solely between Customer and its reseller, and Customer shall not attempt to enforce any such warranties or commitments against Symantec.

12. **Warranty Disclaimers and Exclusions.**

12.1 EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 11.1 AND 11.2, CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING AS TO, BUT NOT LIMITED TO MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSES, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

12.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC DOES NOT WARRANT THAT: (A) THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (B) THE PRODUCTS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE; (C) the PRODUCTS, AS APPLICABLE, will always block access to the addresses and applications that are contained therein; (D) the PRODUCTS, AS APPLICABLE, will contain every foreseeable URL address, VIRUS or application that should potentially be blocked; (E) addresses, PATTERN FILES and applications contained in the PRODUCTS, AS APPLICABLE, will be appropriately categorized; (F) THE BC DATA WILL BE ACCURATE OR COMPLETE; OR (G) THE FEATURES, CATEGORIES, OR FUNCTIONALITIES OF THE PRODUCTS WILL BE AVAILABLE AT ANY TIME IN THE FUTURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE PRODUCTS (i) DO NOT VERIFY THE VALIDITY OF CERTIFICATES FOR WEBSITES IF CUSTOMER ENABLES SSL INSPECTION FUNCTIONALITY AND (ii) MAY DELIVER WEBSITES WITHOUT NOTIFYING CUSTOMER IF THE WEBSITE CERTIFICATES HAVE EXPIRED OR ARE OTHERWISE INVALID, AND THAT SYMANTEC HAS NO LIABILITY FOR EACH OF THE FOREGOING.

12.3 NOTWITHSTANDING ANY OTHER TERM HEREIN, Symantec makes no representations AND UNDERTAKES NO INDEMNIFICATION OBLIGATIONS REGARDING, ARISING FROM OR RELATED TO the legality of monitoring, INSPECTION, DECRYPTION AND/OR RE-ENCRYPTION OF INFORMATION in any particular jurisdiction, and CUSTOMER shall be SOLELY responsible, and Symantec shall have no responsibility for determining that CUSTOMER'S proposed OR ACTUAL use of PRODUCTS OR SERVICES complies with applicable FEDERAL laws. CUSTOMER acknowledges and agrees that IT IS solely responsible for selecting configurations, POLICIES AND PROCEDURES IN PRODUCTS THAT ARE CONFIGURABLE INCLUDING, WITHOUT LIMITATION, THE SELECTION OF FILTERED CATEGORIES AND WEB APPLICATION CONTROLS, AND FOR ASSURING THAT THE SELECTION (A) conforms to CUSTOMER'S policies and procedures and (B) complies with all applicable FEDERAL law.

12.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: (A) THE MISUSE OF THE PRODUCTS OR SERVICES BY CUSTOMER OR BY THIRD PARTIES, EXCEPT AS PROVIDED BY FEDERAL LAW THAT WOULD OTHERWISE SUPERSEDE THE TERMS OF THIS AGREEMENT, (B) SECURITY BREACHES; (C) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED USING THE PRODUCTS OR SERVICES; OR (D) USE OR LOSS OF CUSTOMER'S SOFTWARE, FIRMWARE, INFORMATION OR MEMORY DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY HARDWARE

OR SOFTWARE RETURNED TO SYMANTEC UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY EVEN IF SYMANTEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12.5 CUSTOMER may link to third party sites through the use of the PRODUCTS. Third party sites are not under the control of Symantec, and Symantec is not responsible for the contents AND TRANSMISSIONS of any third party sites, any links contained in third party sites, or any changes or updates to third party sites.

12.6 The Products are not designed, manufactured or intended for use in High Risk Activities. Symantec specifically disclaimS any express or implied warranty of fitness for High Risk Activities.

13. Disclaimers of Liability. CUSTOMER ACKNOWLEDGES AND AGREES THAT SYMANTEC WILL HAVE NO LIABILITY WHATSOEVER AND SPECIFICALLY excludes liability for (A) any indirect, incidental, special, or consequential damages or loss, (b) loss of profits, (c) loss of data, (d) BUSINESS INTERRUPTION) AND (E) costs of procuring substitute goods, software or services, even if it has been advised of the possibility of such damages, arising out of or in connection with this Agreement.

14. Limitation of Liability. Symantec's maximum liability whether for breach of this Agreement or in tort (including negligence) or for any other common law or statutory cause of action arising out of or in connection with this Agreement is limited in the aggregate to two times the fees paid for the SPECIFIC PRODUCT OR Service giving rise to such liability. The foregoing exclusion/limitation of liability shall not apply (1) to personal injury or death caused by Symantec's negligence; (2) for fraud; (3) for express remedies under the law that expressly supersede the terms of this Agreement; or (4) for any other matter for which liability cannot be excluded by law.

15. [Intentionally Omitted]

16. Miscellaneous. Neither the license to use nor this Agreement are assignable or transferable by Customer without prior written notice, to and written consent from, Symantec; any attempt to do so shall be void. Any consent granted by Symantec shall be subject to the restrictions set forth in this Agreement, including without limitation sub-section 4.3. Assignment by Symantec is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). Any notice, report, approval or consent required or permitted hereunder shall be in writing. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The United Nations Convention on Contracts for the International Sale of Goods or the Uniform Commercial Code or similar statutes shall not apply with respect to this Agreement. Any waivers or amendments shall be effective only if made in writing by non-preprinted agreements clearly understood by both parties to be an amendment or waiver and signed by an authorized representative of the respective parties. Both parties agree that this Agreement, the Schedule Pricelist and any applicable GSA Customer Purchase Orders are the complete and exclusive statement of mutual understanding of the parties in regards to the Products and takes precedence over all previous agreements relating to the Products. This Agreement, however shall not take precedence over the terms of the Schedule Pricelist or any specific, negotiated terms on the GSA Customer's Purchase Order.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Accepted by:

Customer:

Symantec Systems, Inc.

Authorized
Signature: _____

Authorized
Signature: _____

Name _____

Name _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Symantec Systems, Inc. Product Use Guide – Product-Specific Usage Rights and Restrictions 20 February 2014

General Comments

Subscription Software with Loaned Hardware Some physical appliances (e.g. some CacheFlow appliances) may be available under a subscription software license with loaned hardware. At the end of the subscription term, customers must either renew their subscription or remove the appliance from service. If the subscription is not renewed or expires, customers shall return the physical appliance and software thereon promptly upon request.

Subscriptions are purchased on a term basis. Standard support is included as part of a subscription. For clarification, but without limitation, if a customer's usage (such as number of users) increases in the middle of a subscription term, the customer must execute a new GSA Customer Purchase Order for the additional usage. In addition, if a subscription expires, services may cease to function. Customers must renew their Subscriptions to avoid loss of functionality.

The customer is responsible for supplying the hardware for software and virtual appliances.

Common Definitions and Terms

"Instance" means an instance of software created by executing the software's setup or install procedure or by duplicating an existing Instance. To "run an Instance" means to load an Instance of the software into memory and execute one or more of its instructions. Once running, an "Instance" is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

ProxySG

The ProxySG is an appliance ("ProxySG") sold with a perpetual software license. The ProxySG is available as either MACH5 Edition or Proxy Edition. The Proxy Edition includes the MACH5 capabilities, with additional functionality. Certain ProxySG models (SG300-5, SG300-10, SG600-10, SG600-20, SG900-10, SG900-10B, SG900-20, SG510-5, SG510-10, SG510-20, SG810-5, SG810-10, SG810-20) are restricted by maximum concurrent client IP addresses as set forth in the product descriptions. For these platforms, when the maximum number of client IPs is reached, the appliance will (depending on the user configuration) either bypass new connections or queue new connections for later handling. The platforms not specifically listed above will not cap the number of client IPs, but will process traffic from devices until the appliance exhausts available resources.

Several optional add-on features are licensed separately subject to the execution of new or modified Orders. The following options are for use only on the specific ProxySG for which the option is licensed, unless otherwise noted.

- Symantec WebFilter (BCWF). BCWF is available as either a perpetual or a subscription license as set forth below. Both license types are sold on a per user basis. BCWF may be used for no more than the licensed number of BCWF users. For BCWF purposes, a user means any person that may access (through any number of devices such as a mobile device and desktop), at any time, the Internet via a ProxySG that utilizes BCWF. End users without Internet access need not be counted. BCWF licensed for ProxySG may be used on one or more licensed Symantec Proxy Edition appliances provided that usage is in compliance with the above user restriction (BCWF is not available on the ProxySG MACH5 Edition). A perpetual license provides a onetime download of the BCWF database on the ProxySG, but this license does not allow database updates or use of Symantec's WebPulse service. Database updates require a valid BCWF support contract in addition to a BCWF perpetual license.
- Subscription licenses are for the applicable term and must be renewed prior to expiration of the term for continuous service.
- Flash Capability Option. The Flash option, offered with a perpetual license, enables the ProxySG to control, cache and/or split Adobe Flash RTMP, RTMPT, and encrypted RTMP/T traffic.
- Encrypted Tap. The Encrypted Tap option, offered with a perpetual license, enables the ProxySG to process encrypted traffic and output the decrypted content for inspection by separately purchased external system(s). Encrypted Tap is not available on the ProxySG MACH5 edition.
- CachePulse. The CachePulse option, offered on a subscription basis for a specific term, provides caching rules and instruction updates. The CachePulse updates require that the ProxySG appliance has a valid support contract in addition to a CachePulse subscription license.
- Web Applications Protections (WAP). WAP, offered on a subscription basis for a specific term, allows the ProxySG to automatically utilize updated signatures, rules and data for the purposes of securing and protecting web application and content servers from direct Internet threats. WAP is not available on the ProxySG MACH5 Edition. WAP updates require that the ProxySG appliance has a valid support contract in addition to a WAP subscription license.

Secure Web Gateway Virtual Appliance

The Secure Web Gateway Virtual Appliance (SWG VA) is licensed on a subscription basis for the applicable term. SWG VA is licensed based on maximum concurrent client IP addresses. A SWG VA may not be used for more than the number of concurrent client IP addresses for which the subscription has been purchased, and only one Instance of SWG VA may be run per subscription license. When the maximum number of client IP addresses is reached, the virtual appliance will (depending on the user configuration) either bypass new connections or queue new connections for later handling. Unlike the Proxy Edition of ProxySG, the SWG VA does not contain some Proxy Edition (MACH5) optimization features and cannot be upgraded to Proxy Edition. BCWF is included as part of a SWG VA subscription during the applicable SWG VA subscription term for use only on the applicable SWG VA.

Several optional add-on features are licensed separately pursuant to the execution of a new or modified Order. The following options are for use only on the specific SWG VA for which the option is licensed.

- CachePulse. The CachePulse option, offered as a subscription basis for a specific term, provides caching rules and instruction updates.

- Web Applications Protections (WAP), offered on a subscription basis for specific term, allows the SWGVA to automatically utilize updated signatures, rules and data for the purposes of securing and protecting web application and content servers from direct Internet threats.

MACH5 VA

The MACH5 virtual appliance (M5 VA) is licensed on a subscription basis for the applicable term.

M5 VA is licensed based on maximum concurrent client IP addresses. An M5 VA may not be used for more than the number of concurrent client IP addresses for which the subscription has been purchased, and only one Instance of MACH5 may be run per subscription. When the maximum number of client IP addresses is reached, the appliance will (depending on the user configuration) either bypass new connections or queue new connections for later handling. Unlike the MACH5 Edition of ProxySG, the M5 VA is not upgradeable to Proxy Edition or Secure Web Gateway VA.

The following optional add-on features are licensed separately pursuant to the execution of a new or modified Order.. The following options are for use only on the specific MACH5VA for which the option is licensed.

- Flash Capability Option. The Flash option, offered on a subscription basis for a specific term, enables the proxy to control, cache and/or split Adobe Flash RTMP, RTMPT, and encrypted RTMP/T traffic.
- CachePulse. The CachePulse option, offered on a subscription basis for a specific term, provides caching rules and instruction updates.

Data Loss Protection (DLP)

DLP is an appliance sold with a perpetual software license. The DLP appliance requires a Network DLP and/or Discovery DLP. Network DLP (designed to inspect and apply policy on network communications such as HTTP, FTP, SMTP and Webmail) and Discovery DLP (designed to scan workstations and file services for sensitive data) are each sold on a subscription basis. Network DLP and Discovery DLP may not be used for more than the number of users for which the subscription has been purchased. For Network and Discovery DLP purposes only, a user means any unique log-in ID (employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter or guests, etc.).

Cloud Services

Symantec offers multiple cloud services, such as the Web Security Service (WSS), Mobile Device Security (MDS), and Hosted Reporting services, subject to the terms and conditions set forth in the separate Cloud Services Agreement and pursuant to the execution of a new or modified Order.

ProxyAV

ProxyAV is an appliance sold with a perpetual software license. ProxyAV requires an anti-virus (AV) subscription to function.

Subscriptions include updates to pattern files containing information to identify viruses or malicious software. A ProxyAV (and the applicable subscription) may be used for no more than the number of users for which the subscription has been purchased, which is stated as a quantity in an applicable Order. A user means, for purposes of ProxyAV, any person that may access the internet via one or more ProxySG(s) that are configured to send traffic to the applicable ProxyAV appliance for services. If a subscription expires or terminates, services will cease to update on the ProxyAV appliance.

Content Analysis System

Content Analysis System (CAS) is an appliance sold with a perpetual software license. CAS requires a separately purchased applicable File Inspection subscription to function. A File Inspection subscription (designed to provide virus protection and file whitelisting functionality) provides updates to pattern files containing information to identify viruses or malicious software. A CAS appliance (and applicable subscription) may not be used for more than the number of users for which the subscription has been purchased, which is stated as a quantity in an applicable Order. A user means, for purposes of CAS, any person that may access the internet via one or more ProxySG(s) and/or SWG VA(s) that are configured to send traffic to the applicable CAS appliance for services. If a subscription expires or terminates, services will cease to update on the CAS appliance. CAS includes the capability to direct files to other products, but such technologies are subject to the execution of a new or modified Order.

Malware Analysis Appliance

The Malware Analysis Appliance (MAA) is an appliance sold with a perpetual software license. In addition to the appliance perpetual license, a subscription license is required per appliance in order to receive access to profile plugins and detection pattern updates provided as part of the MAA's functionality. As part of its functionality, third party applications can also be installed on a VM profile on the MAA. Symantec does not provide any such third party applications, with the exception of Microsoft® Windows® System software. Except for Windows, the user is solely responsible for procuring and licensing properly any third party applications. The following applies with regard to Microsoft Windows:

The MAA Product is provided with a Microsoft Product Identifier Card that includes Microsoft Certificates of Authenticity (COAs), with the COAs provided based on the customer's representation to Symantec as to whether or not it has in place a valid Microsoft Volume Licensing Agreement that includes Software Assurance.

For customers purchasing the Symantec Malware Analysis Appliance with a valid Microsoft Volume Licensing Agreement that includes Software Assurance

User must have a valid Microsoft Volume Licensing agreement and must purchase Microsoft's Software Assurance for each COA provided. The user is licensed to use any combination of the following Microsoft Windows Operating System products running in simultaneous Instances, provided that in no event may the number of simultaneously running Instances exceed the number of COAs provided on the Microsoft Product Identifier Card.

- Microsoft® Windows® XP Professional for Embedded Systems ESD (Virtualization Only)
- Windows® 7 Professional for Embedded Systems ESD (Virtualization Only)

For customers purchasing the Symantec Malware Analysis Appliance without a valid Microsoft Volume Licensing Agreement that includes Software Assurance

If the user is not party to a valid Microsoft Volume Licensing agreement that includes Software Assurance, the COAs provided on the Microsoft Product Identifier card will be product-specific, with the same number of COAs provided for each available product. In this case, the user is licensed to use any combination of Microsoft Windows Operating System products running in simultaneous Instances, provided that in no event may the number of simultaneously running Instances exceed a number equal to the number of COAs provided for each relevant product. (That is, if, for example, the Microsoft Product Identifier card shipped with the product includes 12 COAs for Windows XP Professional and 12 COAs for Windows 7 Professional, the product may run up to 12 total Instances of any combination of products).

For these purposes, the following definitions apply:

- “Operating System Environment” or “OSE” means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. There are two types of OSEs, physical and virtual. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.
- “Physical OSE” means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Hyper-V or similar third-party technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar third-party technologies) is considered part of the Physical OSE.
- “Virtual OSE” means an OSE that is configured to run on a virtual hardware system.

SSL Visibility

The SSL Visibility Appliance is a physical appliance sold with a perpetual software license.

PacketShaper

The PacketShaper is an appliance sold with a perpetual software license. Depending on the platform, the options, requirements and restrictions vary.

Without any separately-purchased options, the PacketShaper 900, PacketShaper 1700, PacketShaper 3500, PacketShaper 7500, PacketShaper 10000 and PacketShaper 12000 appliances run in monitor only mode. In this mode, the PacketShaper only provides visibility functionality. Additional functionality is available pursuant to the execution of a new or modified Order.

. The following options are for use only on the specific PacketShaper for which the option is purchased.

- Shaping Keys provide Quality of Service (QoS) and packet shaping. Shaping is licensed on a perpetual basis by the throughput managed. For example, if a customer wants to manage a 10 Mbps WAN link he or she would purchase a 10M Shaping license that may manage 10 Mbps inbound and 10 Mbps outbound or 20 Mbps of total bandwidth.
- Compression Keys compress traffic on the customer’s network and are provided with a perpetual license.
- The PacketShaper 12000 offers an “ISP 10000” option allowing the creation and use of up to 10,000 classes when using the ISP build of software. Without this license, the system will limit to 5,000 classes with the ISP build or 2,048 classes when running the standard build.
- WebPulse Services. WebPulse Services queries Symantec’s WebPulse cloud service for URL category and web application classification information. Currently, use of WebPulse services on a PacketShaper product requires a valid support contract for the specific PacketShaper product. The PacketShaper product will regularly query Symantec’s support servers to verify entitlement.

The PacketShaper S500 (PS-S500) requires a separately purchased shaping license to function (unlike other PacketShapers which have monitor only option). Shaping is subject to a perpetual license, which restricts the inbound and outbound throughput that is managed by the PS-S500. For example, if a customer wants to manage a 5 Gbps WAN link they would purchase a 5G Shaping license that can manage up to 5 Gbps inbound bandwidth and 5 Gbps outbound bandwidth. Increasing the licensed bandwidth also increases certain other specifications of the unit including dynamic partitions as well as managed hosts and flows.

The following optional add-on feature is licensed separately for the PS-S500 pursuant to the execution of a new or modified Order. The option is for use only on the specific PacketShaper for which the option is licensed.

- WebPulse Services. WebPulse Services queries Symantec’s WebPulse cloud service for URL category and web application classification information. Currently, use of WebPulse services on a PacketShaper requires a valid support contract for the specific PacketShaper pursuant to the execution of an Order.
- . The PacketShaper will regularly query Symantec’s support servers to verify entitlement.

Notes: the PacketShaper S500 does not offer compression or acceleration options or varying class levels.

CacheFlow

CacheFlow is an appliance sold with a perpetual software license (and, in some cases, as a subscription with loaned hardware as described below) pursuant to the execution of an Order.

. The following data is available for CacheFlow appliances.

- Symantec WebFilter (BCWF). BCWF for CacheFlow is licensed 1) on a per CacheFlow appliance basis or 2) based on the number of concurrent (maximum simultaneous) users with a user being defined as any end user that accesses the Internet via a CacheFlow that utilizes BCWF. This perpetual license is offered for a one time download of the BCWF database on the CacheFlow device, but this license does not allow database updates or use of Symantec’s WebPulse service. Database updates require a valid BCWF support contract pursuant to the execution of an Order.

- CachePulse. The CachePulse service provides caching rules and instruction updates. CachePulse service is provided for the CacheFlow appliance with a valid support contract for such appliance and pursuant to the execution of an Order.

Other CacheFlow Notes: CacheFlow appliances are configured to send information consisting of aggregated statistics to Symantec subject to Government security requirements if agreed-upon and stated in the Order. This functionality cannot be disabled. Such information includes, but is not limited to, basic network configuration for each network interface; bandwidth used by HTTP services; HTTP request/response attributes (e.g. cacheable, non-cacheable, non-cacheable reasons); operation of the object cache (per-disk and overall); raw system resources such as: per-cpu usage and memory pressure, and calculated resources such as: resource load, bandwidth savings; hardware diagnostics reporting (disks, memory, networks interfaces, and power supply); and CachePulse feedback consisting of domain popularity and caching effectiveness. Symantec will also collect health information for appliances that are currently or was recently in a 'Warning' or 'Critical' state. If BCWF is enabled, a summary containing content filter configuration details (including the database provider, last upload time, and services in use) is included. Following a reboot of the appliance, the following information will also be sent to Symantec: the reason for the restart; software traceback information, in case of an unexpected software crash (this data allows for preliminary software crash analysis, before a more detailed (and larger) context core file is uploaded to Symantec); core image summary, specifically detailing the number of core images on the appliance.

Security Analytics Platform

The Security Analytics platform is offered as a physical or virtual appliance or as software. Physical appliances are sold with a perpetual software license pursuant to the execution of an Order.

Software and Virtual Appliances are licensed on either a perpetual or subscription basis.

Several optional add-on features are licensed separately pursuant to the execution of an Order. The following options are for use only on the specific Security Analytics platform for which the option is licensed.

- **Retention.** Security Analytics includes a base amount of indexed data retention. Retention defines the amount of aggregate Metadata and Packet storage data a Security Analytics appliance will be able to address and is enforced in the system. To increase retention, additional storage must be ordered pursuant to the execution of a new or modified Order.

- **ThreatBLADEs.** ThreatBLADE subscriptions provide additional functionality to the Security Analytics platform. Subscriptions allow access to the applicable ThreatBLADE service for the subscription term. ThreatBLADE subscriptions may not be used for more than the number of users for which subscriptions have been purchased as indicated in an applicable Order. For purposes of ThreatBLADEs, a "user" means any person who may have his or her activity recorded, at any time during the subscription period, in the Security Analytics platform(s).
- **WebThreat BLADE** provides URL category information as well as file information for content traversing Web protocols, i.e. HTTP and unencrypted HTTPS.
- **FileThreat BLADE** provides file information for content traversing File Transfer protocols, i.e. FTP, tFTP, NFS, SMB.
- **MailThreat BLADE** provides file information for content traversing the E-Mail protocols, i.e. SMTP, POP3 and IMAP.

ThreatBLADE updates require a valid support contract for the Security Analytics appliance pursuant to the execution of an Order.

Security Analytics Platform Central Manager. The Security Analytics Central Manager is offered as a physical or virtual appliance or as software pursuant to the execution of an Order. Physical appliances are sold with a perpetual software license. Software and Virtual Appliances are licensed on either a perpetual or subscription basis.

X-Series

The X-Series system consists of a chassis and separately purchased hardware modules and hardware accessories. The minimum X-Series configuration for a functioning system requires the ordering of each of the following modules, which are offered on a perpetual basis for use on an X-Series chassis pursuant to the execution of a new or modified Order.

- **Application Processor Module (APM).** APMs provide the capability to run applications on the X-Series chassis. X-Series systems require at least one APM. APMs run additional software applications from third parties (such as Checkpoint, Imperva, Cisco (Sourcefire) or Intel Security Public Sector, Inc.) that must be separately licensed from the applicable third party and may have additional license restrictions.
- **Network Processor Module (NPM).** NPMs provide network connectivity to the external network and within the X-Series system. X-Series systems require at least one NPM.
- **Control Processor Module (CPM).** CPMs provide a variety of controls the X-Series system. X-Series systems require at least one CPM.

In addition, the following option is licensed separately pursuant to the execution of a new or modified Order and is used only on the specific X-Series for which the option is licensed.

- **X-Series Routing Software (RSW).** The RSW application is licensed on a perpetual basis and is a set of dynamic routing protocol features that can be applied to an X-Series system. RSW may only be used on a single X-Series system. An additional RSW license must be purchased pursuant to the execution of a new or modified Order for each X-Series system on which the RSW will run.

X-Series Management System (XMS)

The X-Series Management System (XMS) is software offered with a perpetual license for managing X-Series systems.

Customers may not run more than one Instance of XMS for each XMS license purchased. XMS may be used to manage no more than the number of X-Series systems for which licenses(s) have been purchased.

Management Center

Management Center (MC) is a virtual appliance with a subscription license for a specific term. MC is designed to run on a virtual machine (VMware ESX 5.x, Fusion 6.x). Customers may not run more than one Instance of MC for each MC subscription purchased. A MC virtual appliance may be used to manage no more than the number of devices (IP addresses or other registered devices in the MC) for which subscription(s) have been purchased.

Reporter

Reporter is software offered with a perpetual license for reporting on ProxySG access logs. Customers may not run more than one Instance of Reporter for each Reporter purchased. Additional license(s) are required for each Instance of Symantec Reporter and pursuant to the execution of a new or modified Order. Reporter has three versions with different licensing restrictions:

- **Standard Edition.** Reporter Standard Edition is available without an additional fee with a valid ProxySG support contract and may not be used to report on more than 50 million log lines.
- **Enterprise Edition.** Reporter Enterprise Edition may not be used to report on more than 2.5 billion log lines and has a perpetual software license.
- **Premium Edition.** Reporter Premium Edition may not be used to report on more than 20 billion log lines and has a perpetual software license.

Director

Director is offered as a physical or virtual appliance, with a perpetual software license (for both the physical and virtual appliance), for managing ProxySGs, MACH5 VAs and/or SWG VAs. Director may only be used to manage a maximum of 300 (physical and/or virtual) appliances at any time. For the Director virtual appliance, customers may not run more than one Instance of Director for each Director virtual appliance license purchased.

IntelligenceCenter

IntelligenceCenter (IC) is software offered with a perpetual license for reporting on PacketShapers. The IC base license includes the IC application and a single Data Collector. With the base license, a customer may report on only a single device. A customer may run no more than one Instance of IC per base license.

- **Additional Devices.** Additional device upgrade license(s) must be ordered pursuant to the execution of a new or modified Order to report on additional devices. Device upgrade licenses require a base license. The number of devices configured to be reported on by IC may not exceed the number of devices stated in an applicable Order.
- **Data Collector (DC).** Additional DC licenses are required to collect data in more than one database. A customer may run no more than one Instance of DC per DC license.

PolicyCenter

PolicyCenter (PC) is software offered with a perpetual license for managing PacketShapers. With the PC base license, a customer may manage only a single device. A customer may run no more than one Instance of PC per base license.

- **Additional Devices.** Additional device upgrade license(s) must be purchased pursuant to the execution of a new or modified Order to report on additional devices. Device upgrade licenses require a base license. The number of devices configured to be reported on by IC may not exceed the number of devices for which license fees have been paid.
- **Data Collector (DC).** Additional DC licenses are required to collect data in more than one database. A customer may run no more than one Instance of DC per DC license.

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EXHIBIT B

RMA PROCEDURES

(a) Symantec – Returned Material Authorization (RMA) Process

Symantec provides RMA Advanced Hardware Exchanges to those customers who have a valid entitlement under product warranty or a service contract. Below are the steps to take to initiate a RMA.

1. Open a technical support case via [BlueTouch Online](#) or contact [Technical Support](#).
2. A technical support engineer will work with you to troubleshoot the issue and verify whether a hardware repair or replacement is required.
3. If a hardware replacement is required, the technical support engineer will initiate the RMA by obtaining the following customer information:
 - Company Name
 - Shipping Address
 - Contact Name
 - Contact Phone Number
 - Contact email address
 - Problem Description
 - Product Model Number
 - Product Serial Number
4. When the RMA has shipped, the customer will receive a shipment notification which will include instructions regarding the defective hardware return.
5. If the defective hardware is not returned in a timely manner (within 10 days), the customer will be contacted. Customers may also contact Symantec for return instructions, rma@Symantec.com.

(b) RMA Return Instructions (Advanced Exchange)

When returning products to Symantec Systems, follow the return instructions provided with the RMA replacement shipment. Symantec products should be returned within 5 business days from date of receipt. The customer will receive a follow up phone call from Symantec Systems to ensure the return takes place.

Parts deemed consumable by Symantec do not require a RMA and will not include return instructions unless required by local environmental regulations (such as the European Union WEEE Regulation). Parts such as power supplies and fans fall into this category.

Defective products that are not received by Symantec Systems within ten (10) days of receipt are subject to invoicing for the full GSA Schedule List Price. All material returned to Symantec Systems must follow the return instructions. Symantec Systems reserves the right to refuse shipments that do not include (at minimum) the RMA number. For inspection prior to repair, all parts should be free from dirt, grease, oil, finger print, localized permanent marks, and other foreign substances. Dust caused by shipping material chafing is acceptable if it can be brushed off or blown off with air. Symantec Systems reserves the right to refuse shipments that are not in acceptable repair condition. If you have any questions regarding a RMA return or did not receive return instructions with your shipment, please contact rma@Symantec.com.

(c) Requesting Status on Existing RMA's

Forward all questions regarding shipment, status, customs, duties and taxes to rma@Symantec.com. Please reference your RMA number when submitting these inquiries. Customers may also access RMA status via [BlueTouch Online](#) utilizing the [RMA Status](#) link.

(i) Symantec Hardware Replacement Shipping Terms and Conditions

Symantec's hardware replacement shipping terms are determined by the active Support Agreement level in place for the product serviced under the RMA.

Hardware Replacement

(1) Chassis Replacement Unit Policy

Effective October 24, 2012, select RMA's will consist of either a Field Replaceable Unit (FRU) or a Chassis Replacement Unit (CRU) as defined in the below table. Symantec will no longer ship full replacement units for the product models listed in the below table. If Symantec determines a replacement chassis is required after appropriate trouble shooting with diagnostic tools, Symantec will ship the CRU as replacement hardware. The CRU is a replacement chassis without the following parts: System Hard Drives, Power Supplies, Power Cables, Rail Kits and Add-on cards (Excluded Parts). Customers are required to remove the Excluded Parts, subject the exception below*, from their existing hardware and transfer them to the CRU unit prior to shipping the defective unit to Symantec. Any Excluded Parts received by Symantec will be forfeited and not returned. This CRU policy does not apply to RTF hardware support.

Model	Failed Part	Replacement Hardware
SG900, SG9000, SG200, S400, S500, CF5000, AV1200*, AV1400*, AV2400*	Hard Drives, System Fans, Power Supplies, Add-on Cards	FRU
	Motherboards, Memories, CPUs, Front Panel Displays Other HQ components	CRUs

*For hardware-related issues where diagnostics cannot be run for the AV1200, AV1400, AV2400, Symantec will ship a CRU containing hard drives. Customers will need to ship back the defective unit without removing the hard drives.

(2) For all other models:

A like-model or newer replacement unit will be shipped using a Symantec shipping partner. RMA Requests received during regular business hours and deemed necessary by Technical Support before the RMA cut off time (per the table below) will have replacement hardware shipped same day. Requests received or verified by Symantec Technical Support after the RMA cut off time will ship the following business day. Actual delivery time will vary dependent upon shipping origin and destination. Out-of-box warranty shipments may require additional time to ship.

(ii) RMA Cut-Off Times

*(Daylight Savings Time observances may affect RMA cut-off times where applicable)

Support Center	Standard Business Hours	RMA Cut-Off Time

Americas

Mon-Fri
06:00 to 18:00
Pacific Time Zone

Mon-Fri, 13:00
Pacific Time Zone

(d) RMA Licensing Information

Please follow the RMA licensing procedures listed below to properly register the unit received with Symantec Systems. If you have any questions pertaining to the licensing process, contact Symantec at customer@Symantec.com.

(i) Licensing SG Products

Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the recipient will be running. You may therefore need to downgrade or upgrade the proxy upon receipt. This can be done by navigating to <http://download.Symantec.com>.

For customers running SGOS version 3 or greater, Symantec has already transferred your license and software options from the defective unit to your replacement unit in Symantec's licensing database. The defective unit is now registered under Symantec and has a 60 day demo license key associated with the unit. To license the replacement unit, retrieve the new key while configuring your unit through the Management Console (Maintenance/Licensing/Install/ Retrieve active keys from Symantec). This will require your BlueTouch Online login.

(ii) Licensing AV Products

To license the replacement unit, log into Symantec Licensing Portal, click Symantec ProxyAV, click Swap Licenses From Hardware Serial Number: enter defective unit SN, To Hardware Serial Number: enter replacement unit SN, click Next, click Swap. Retrieve License file from Management Console of replacement ProxyAV unit.

(1) Licensing PacketShaper Products

Symantec depots stock units with predefined OS versions based on platform type since at the time of stocking it is unknown what version the customer will be running. You may therefore need to downgrade or upgrade the PacketShaper upon receipt. This can be done by navigating to <http://download.Symantec.com>.

Once you receive the license key(s) from support, follow the instructions below for license key installation.

1. Login to the PacketShaper command-line interface via the console cable, SSH or telnet.
2. Copy and paste the lines provided (setup key add ...)
3. To complete the installation, issue the command "reset" to reboot the unit.
4. To verify the installation was successful, issue the command, "setup key show".

(e) X-Series RMA Process

If Symantec diagnoses that a reported problem is due to a failed X-Series product, Customer may request a Return Material Authorization ("RMA") number. After Symantec assigns one, Customer will be authorized to return the defective product to a Symantec repair facility. After assigning an RMA number, Symantec will make commercially reasonable efforts to ship that day, at its expense, a replaceable hardware component to arrive at the Customer's designated location following completion of Symantec's diagnosis, provided that the diagnosis is completed prior to 4:00 p m EST for shipments out of Symantec's U.S. facility. If diagnosis is completed after that time, then Symantec shall dispatch a field replaceable hardware product component for arrival at the Customer's site location on the second business day with fastest delivery option following completion of diagnosis. Replacement products may be refurbished or contain refurbished materials. Customer shall promptly return the failed component to Symantec, which component shall become the property of Symantec on an exchange basis. If Symantec does not receive the failed component within fifteen (15) business days of receipt of the replacement component, then Symantec shall invoice the then- GSA Schedule List Price of the replaced component. Symantec will ship replacement products on a next available business day delivery basis, but actual delivery time of hardware components to a Customer's designated location is subject to transit time. The term "business day" refers to a week day other than a federal holiday.

The Customer is responsible for the following:

- Obtaining an RMA number from the Symantec technical support center
- Packaging and shipping RMA products according to Symantec's standard RMA procedure
- Providing accurate site locations, contact information and specific product information with regard to all Symantec products under maintenance
- Where Symantec authorized engineers are to provide on-site replacement services, providing the Symantec field engineer with access to the site, subject to Government security requirements.

Failure to comply with any of the requirements in this section could affect Symantec's ability to provide effective service for your X-Series product, and Symantec cannot be held responsible where its service is affected by the customer's failure to comply.

SYMANTEC MAINTENANCE AND SUPPORT GSA PRICING (CATEGORY M)

Price Category	Product Code	Description	MSRP (%)	GSA Discount
Product New Support (excluding CacheFlow)				
M	Standard	End Customer Support, Level 1->3 Software Support & Return to Factory Hardware Support	13.0%	8%
M	Standard Plus	End Customer Support, Level 1->3 Software Support & Same Day Shipment Hardware Support	15.0%	8%
M	Advanced	End Customer Support, Level 1->3 Software Support & Next Business Day Delivery Hardware Support	17.0%	8%
M	Onsite Advanced	End Customer Support, Level 1->3 Software Support & Next Business Day Delivery Hardware Support with Onsite Technician	19.0%	8%
M	Premium	End Customer Support, Level 1->3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support	20.0%	8%
M	Premium Plus	End Customer Support, Level 1->3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support	23.0%	8%
M	Onsite Premium	End Customer Support, Level 1->3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	22.0%	8%
M	Onsite Premium Plus	End Customer Support, Level 1->3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	25.0%	8%
M	Software Support	End Customer Support, Level 1->3 Software Support	12.0%	8%
Software Product New Support (Applies to Perpetual Licenses for BCWF, SWG VA and Director VA)				
M	SW Product Support	End Customer Software Product Support, Level 1->3	18.0%	8%
Hardware Only Product New Support (excluding CacheFlow)				
<u>NOTE:</u> Hardware (HW) only support does not come with Software (SW) support (this must be purchased separately). HW support does not allow for any download or upload capabilities for your HW (this is only provided through your SW support entitlement).				
M	Standard HW	End Customer Support, Return to Factory Hardware Support	1.0%	8%
M	Standard Plus HW	End Customer Support, Same Day Shipment Hardware Support	3.0%	8%
M	Advanced HW	End Customer Support, Next Business Day Delivery Hardware Support	5.0%	8%
M	Onsite Advanced HW	End Customer Support, Next Business Day Delivery Hardware Support with Onsite Technician	7.0%	8%
M	Premium HW	End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support	8.0%	8%
M	Premium Plus HW	End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support	11.0%	8%
M	Onsite Premium HW	End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	10.0%	8%
M	Onsite Prem Plus HW	End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	13.0%	8%

Product Renewal Support (excluding CacheFlow)				
M	R-Standard	Renewal Service, End Customer Support, Level 1->3 Software Support & Return to Factory Hardware Support	13.0%	8%
M	R-Standard Plus	Renewal Service, End Customer Support, Level 1->3 Software Support & Same Day Shipment Hardware Support	15.0%	8%
M	R-Advanced	Renewal Service, End Customer Support, Level 1->3 Software Support & Next Business Day Delivery Hardware Support	17.0%	8%
M	R-Onsite Advanced	Renewal Service, End Customer Support, Level 1->3 Software Support & Next Business Day Delivery Hardware Support with Onsite Technician	19.0%	8%
M	R-Premium	Renewal Service, End Customer Support, Level 1->3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support	20.0%	8%
M	R-Premium Plus	Renewal Service, End Customer Support, Level 1->3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support	23.0%	8%
M	R-Onsite Premium	Renewal Service, End Customer Support, Level 1->3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	22.0%	8%
M	R-Onsite Premium Plus	Renewal Service, End Customer Support, Level 1->3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	25.0%	8%
M	R-Software Support	Renewal Service, End Customer Support, Level 1->3 Software Support	12.0%	8%
Software Product Renewal Support (Applies to Perpetual Licenses for BCWF, SWG VA and Director VA)				
M	R-SW Product Support	Renewal Service, End Customer Software Product Support, Level 1->3	18.0%	8%
Hardware Only Product Renewal Support (excluding CacheFlow)				
NOTE: Hardware (HW) only support does not come with Software (SW) support (this must be purchased separately). HW support does not allow for any download or upload capabilities for your HW (this is only provided through your SW support entitlement).				
M	R-Standard HW	Renewal Service, End Customer Support, Return to Factory Hardware Support	1.0%	8%
M	R-Standard Plus HW	Renewal Service, End Customer Support, Same Day Shipment Hardware Support	3.0%	8%
M	R-Advanced HW	Renewal Service, End Customer Support, Next Business Day Delivery Hardware Support	5.0%	8%
M	R-Onsite Advanced HW	Renewal Service, End Customer Support, Next Business Day Delivery Hardware Support with Onsite Technician	7.0%	8%
M	R-Premium HW	Renewal Service, End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support	8.0%	8%
M	R-Premium Plus HW	Renewal Service, End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support	11.0%	8%
M	R-Onsite Premium HW	Renewal Service, End Customer Support, 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	10.0%	8%

M	R-Onsite Prem Plus HW	Renewal Service, End Customer Support, 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	13.0%	8%
BTSP Product Support				
Price Category	Product Code	Description	MSRP (%)	GSA Discount
M	BTSP Advanced	BlueTouch Partner Support, Level 3 Software Support & Next Business Day Delivery Hardware Support	16%	8%
M	BTSP Advanced HW	BlueTouch Partner Support, Next Business Day Delivery Hardware Support	5%	8%
M	BTSP Onsite Advanced	BlueTouch Partner Support, Level 3 Software Support & Next Business Day Delivery Hardware Support with Onsite Technician	18%	8%
M	BTSP Onsite Advanced HW	BlueTouch Partner Support, Next Business Day Delivery Hardware Support with Onsite Technician	7%	8%
M	BTSP Onsite Prem Plus HW	BlueTouch Partner Support, 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	13%	8%
M	BTSP Onsite Premium	BlueTouch Partner Support, Level 3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	21%	8%
M	BTSP Onsite Premium HW	BlueTouch Partner Support, 9x5x4 Hour Parts Replacement Hardware Support with Onsite Technician	10%	8%
M	BTSP Onsite Premium Plus	BlueTouch Partner Support, Level 3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support with Onsite Technician	24%	8%
M	BTSP Premium	BlueTouch Partner Support, Level 3 Software Support & 9x5x4 Hour Parts Replacement Hardware Support	19%	8%
M	BTSP Premium HW	BlueTouch Partner Support, 9x5x4 Hour Parts Replacement Hardware Support	8%	8%
M	BTSP Premium Plus	BlueTouch Partner Support, L3 Software Support & 24x7x4 Hour Parts Replacement Hardware Support	22%	8%
M	BTSP Premium Plus HW	BlueTouch Partner Support, 24x7x4 Hour Parts Replacement Hardware Support	11%	8%
M	BTSP Software Support	BlueTouch Partner Support, Level 3 Software Support	11%	8%
M	BTSP Standard	BlueTouch Partner Support, Level 3 Software Support & Return to Factory Hardware Support	12%	8%
M	BTSP Standard HW	BlueTouch Partner Support, Return to Factory Hardware Support	1%	8%
M	BTSP Standard Plus	BlueTouch Partner Support, Level 3 Software Support & Same Day Shipment Hardware Support	14%	8%
M	BTSP Standard Plus HW	BlueTouch Partner Support, Same Day Shipment Hardware Support	3%	8%
M	BTSP SW Product Support	BlueTouch Partner Software Product Support, Level 3	18%	8%
M	BTSP-SA Advanced	Security Analytics, BlueTouch Partner Support, Level 3 Software Support & Next Business Day Delivery Hardware Support	21%	8%
M	BTSP-SA Advanced HW	Security Analytics, BlueTouch Partner Support, Next Business Day Delivery Hardware Support	8%	8%
M	BTSP-SA Software Support	Security Analytics, BlueTouch Partner Support, Level 3 Software Support	13%	8%

M	BTSP-SA Standard Plus	Security Analytics, BlueTouch Partner Support, Level 3 Software Support & Same Day Shipment Hardware Support	19%	8%
M	BTSP-SA Standard Plus HW	Security Analytics, BlueTouch Partner Support, Same Day Shipment Hardware Support	6%	8%
M	BTSP-SA SW Product Support	Security Analytics, BlueTouch Partner Software Product Support, Level 3	19%	8%

Tanium
1625 Shattuck Ave., Suite 200
Berkeley, CA 94709

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Tanium** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

TANIUM

TANIUM LICENSE, WARRANTY AND SUPPORT TERMS

- 1. Grant of License.** During the term listed on the ordering documents, Contractor grants Licensee a revocable, nontransferable, nonexclusive license to use the object code version of the software identified in the attached cover sheet or other order document governed by this Agreement and any accompanying documentation (collectively, the “**Software**”) for Licensee’s internal use only on the Licensed Machines. The term “Software” will include any updates, bug fixes, and versions (collectively, “**Enhancements**”) provided by Contractor in connection with Support Services, as defined in Section 0. The Software is licensed to Licensee, not sold. Except for the limited license granted above, Contractor and its licensors retain all right, title and interest in the Software, all copies thereof, and all proprietary rights in the Software, including copyrights, patents, trademarks and trade secret rights.
- 2. Restrictions.** The license granted to Licensee is restricted as follows:
 - **Limitations on Copying and Distribution.** Licensee may not copy or distribute the Software except to the extent that copying is necessary to use the Software for purposes set forth herein. Licensee may make a single copy of the Software for backup and archival purposes.
 - **Limitations on Reverse Engineering and Modification.** Except to the extent expressly permitted by applicable law, Licensee may not reverse engineer, decompile, disassemble, modify or create works derivative of the Software.
 - **Sublicense, Rental and Third Party Use.** Licensee may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Software, or directly or indirectly permit any third party to use or copy the Software.
 - **Proprietary Notices.** Licensee may not remove any proprietary notices (e.g., copyright and trademark notices) from the Software. Licensee must reproduce the copyright and all other proprietary notices displayed on the Software on each permitted back-up or archival copy.
 - **Use in Accordance with Documentation.** All use of the Software shall be in accordance with its then current documentation.
 - **Compliance with Applicable Law.** Licensee shall be solely responsible for ensuring that Licensee’s use of the Software is in compliance with all applicable foreign, federal, state and local laws, and rules and regulations.
- 3. Third Party Components.** The Software and future Enhancements may contain certain third party components (“**Third Party Components**”) that are provided to Licensee under terms and conditions of this Agreement. Notwithstanding the foregoing, the following terms and conditions apply to all “Third Party Components”: (i) all Third Party Components are provided on an “AS IS” basis; (ii) Contractor will not be liable to Licensee or indemnify Licensee for any claims related to the Third Party Components; and (iii) Contractor will not be liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages with respect to the Third Party Components. Except as may be provided in the schedule contract, the Federal Acquisition Regulation (FAR), and other applicable laws, Licensee’s sole and exclusive remedy with regard to any defect, claim, or other dispute relating to the Third Party Components is to cease use of such components. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government’s right to express remedies provided in the GSA Schedule contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) Patent Indemnification, and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).
- 4. Support Services.** Contractor will provide Licensee with the support and maintenance services (the “**Support Services**”) described in Exhibit B Support Services Terms herein
- 5. Limited Warranty; Disclaimer.** Contractor warrants that (i) for a period of thirty (30) days from delivery to Licensee, the Software will operate in substantial conformity with its then current generally available documentation; and (ii) it shall use screening software to scan the Software prior to delivery for viruses, Trojan horses, and other malicious code. Contractor shall not be liable for failures caused by third party hardware and software (including Licensee’s own systems), misuse of the Software, or Licensee’s negligence or willful misconduct. EXCEPT AS PROVIDED IN THIS SECTION, THE SOFTWARE AND SUPPORT AND IMPLEMENTATION SERVICES ARE PROVIDED ON AN “AS AVAILABLE,” “AS IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR AND ITS SUPPLIERS AND VENDORS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND SUPPORT AND IMPLEMENTATION SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT, AND QUALITY OF INFORMATION. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR SHALL CREATE ANY ADDITIONAL LICENSOR WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF LICENSOR’S OBLIGATIONS HEREUNDER. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE US GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACTS DISPUTES ACT, 41 USC 7101-7109.
- 6. U.S. Government Rights.** The Software is commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of any the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS

227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

EXHIBIT B – SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

Contractor will provide Support and Maintenance Services according to the terms and conditions set forth below. Capitalized terms not otherwise define herein will have the meanings set forth in the Agreement.

1. SUPPORT AND MAINTENANCE SERVICES. Support and Maintenance Services consist of (a) Error Correction and Telephone Support provided to a single consistent technical support contact concerning the installation and use of the then current release of a Product Component and the Previous Sequential Release, (b) E - mail Support, (c) Web Support, and (d) Product Component Updates.

2. UPDATES. Any Updates furnished by Contractor will be subject to the terms herein, including the license granted therein. Licensee shall promptly download, distribute and install all Updates as released by Contractor during the Support Period. Licensee acknowledges that any failure to do so could result in Licensee's inability to receive future Updates and Support and Maintenance Services and therefore could cause major security risks.

3. ERROR PRIORITY LEVELS. Contractor shall exercise commercially reasonable efforts (up to 8 hours per month) to correct any Error reported by Licensee in the current unmodified release of Product Component in accordance with the priority level reasonably assigned to such Error by Contractor.

- Priority A Errors - Contractor shall promptly commence the following procedures: (i) assign Contractor engineers to correct the Error; (ii) notify Contractor management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Licensee with periodic reports on the status of the corrections; and (iv) initiate work to provide Licensee with a Workaround or Fix.

- Priority B Errors - Contractor shall exercise commercially reasonable efforts to include the Fix for the Error in the next regular Product Component maintenance release.

- Priority C Errors - Contractor may include the Fix for the Error in the next major release of the Product. If Contractor believes that a problem reported by Licensee may not be due to an Error in a Product Component, Contractor will so notify Licensee. At that time, Licensee may (1) instruct Contractor to proceed with problem determination at its possible expense as set forth below, or (2) instruct Contractor that Licensee does not wish the problem pursued at its possible expense. If Licensee requests that Contractor proceed with problem determination at its possible expense and Contractor determines that the error was not due to an Error in the Product Component, Licensee shall pay Contractor, at Contractor's then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Licensee shall not be liable for (i) problem determination or repair to the extent problems are due to Errors in the Product Component; or (ii) work performed under this paragraph in excess of its instructions; or (iii) work performed after Licensee has notified Contractor that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by Contractor). If Licensee instructs Contractor that it does not wish the problem pursued at its possible expense or if such determination requires effort in excess of Licensee's instructions, Contractor may, at its sole discretion, elect not to investigate the error with no liability therefor.

4. EXCLUSIONS. Contractor shall have no obligation to support: (i) altered or damaged Product Components or any portion of a Product Component incorporated with or into other software; (ii) any Product Component that is not the then current release or immediately Previous Sequential Release; (iii) Product Component problems caused by Licensee's negligence, abuse or misapplication, use of Product Components other than as specified in the Contractor's user manual or other causes beyond the control of Contractor; or (iv) Product Components installed on any hardware that is not supported by Contractor. Contractor shall have no liability for any changes in Licensee's hardware which may be necessary to use Product Components due to a Workaround or maintenance release.

5. PREMIUM SUPPORT. To the extent Licensee is entitled to Premium support as specified in the Initial Product/Services and Fee Schedule or an Additions Schedule: Telephone support will be expanded to 24 hours; Licensee will be given access to expanded Contractor contact information, including technical support managers and engineers; Licensee will be assigned a Contractor technical support engineer as primary contact during Contractor business hours (PST); the amount of time spent by Contractor to address Licensee's Error reports will not be limited to 8 hours per month; and Licensee's Error reports will be given priority over Error reports of the same priority level from Basic support customers.

6. SUPPORT TERM AND EXPIRED SUPPORT. The initial Support Term shall be for the period set forth in the Initial Product/Services and Fee Schedule or an Additions Schedule. In the event Licensee terminates Support and Maintenance Services and later desires to reinstate services, it must do so within one year of termination.

7. RESERVED

8. WARRANTY. CONTRACTOR WARRANTS THAT THE MAINTENANCE AND SUPPORT SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND CONTRACTOR'S ENTIRE LIABILITY SHALL BE THE REPERFORMANCE OF THE NON-CONFORMING MAINTENANCE AND SUPPORT SERVICES OR, IF SUCH IS NOT PRACTICABLE, A REFUND OF THE AMOUNTS PAID FOR THE NON-CONFORMING SERVICES. CONTRACTOR SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF LICENSEE PROVIDES WRITTEN NOTICE OF THE BREACH TO CONTRACTOR WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE MAINTENANCE AND SUPPORT SERVICES. THIS WARRANTY IS LICENSEE'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, CONFORMITY TO ANY REPRESENTATION, SKILL AND CARE. CONTRACTOR DOES NOT WARRANT OR GUARANTEE THAT MAINTENANCE AND SUPPORT SERVICES WILL BE FREE FROM ERRORS OR

DEFECTS OR THAT THE MAINTENANCE AND SUPPORT SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS. Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to Licensee. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 USC 7101-7109

9. RESERVED.

10. GENERAL. In addition to all provisions identified in the Agreement as surviving termination, Sections 8 (with regard to the disclaimers therein) and 10 of these terms and conditions shall also survive termination.

11. RESERVED.

12. DEFINITIONS. The following terms will have the meanings set forth below:

- “Agreement” means the license agreement under which you obtained the Product Component from Contractor.
- “E-mail support” means ability to make requests for technical support assistance by e-mail at any time (with reasonable efforts by Contractor to respond within one business day) concerning the installation and use of the then current release of a Product Component and the Previous Sequential Release.
- “Error” means an error in a Product Component that significantly degrades such Product Component as compared to the Contractor’s published performance specifications.
- “Error Correction” means the use of reasonable commercial efforts to correct Errors.
- “Fix” means the repair or replacement of object or executable code versions of a Product Component or documentation to remedy an Error.
- “Previous Sequential Release” means the release of a Product Component that has been replaced by a subsequent release of the same Product Component. Notwithstanding anything else, a Previous Sequential Release will be supported by Contractor only for a period of six (6) months after release of the subsequent release.
- “Priority A Error” means an Error that renders a Product Component inoperative.
- “Priority B Error” means an Error that substantially degrades the performance of a Product Component or materially restricts Licensee’s use of such Product Component.
- “Priority C Error” means an Error that causes only a minor impact on the Licensee’s use of a Product Component.
- “Product Component” means the software licensed under the Agreement and for which Support and Maintenance Services are being purchased.
- “Support and Maintenance Services” means the specific services described in these terms and conditions.
- “Support Term” means the period for which Licensee has purchased Support and Maintenance Services.
- “Telephone Support” means technical support telephone assistance between 7:00AM and 7:00PM Pacific Time on Tanium’s regular business days concerning the installation and use of the then current release of a Product Component and the Previous Sequential Release.
- “Update” means an update, improvement, or bug fix to a Product Component that Contractor, in its discretion, makes generally available to its support and maintenance customers without additional charge.
- “Web Support” means information available on the World Wide Web, including frequently asked questions, recorded Product demos, bulletin board activity, product documentation and bug reporting.
- “Workaround” means a change in the procedures followed or data supplied by Licensee to avoid an Error without substantially impairing Licensee’s use of a Product Component.

Thycotic Software
1101 17th Street NW
Washington, DC 20036

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Thycotic Software** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

THYCOTIC SOFTWARE

THYCOTIC SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

1. Use of the Product and Support

1.1 Subject to the terms and conditions of this Agreement and the applicable ordering document, Thycotic hereby grants to Ordering Activity a perpetual, non-exclusive, royalty-free license to use the Product for its operational purposes. The Product is available immediately on installation. The use of the Product is available to the number of users and edition set forth on the applicable ordering document issued by Ordering Activity. The rights and licenses granted under this Agreement may be used by or on behalf of any Affiliate of Ordering Activity; **provided that the number of users and edition of any license is not exceeded.** "Affiliate" means, with respect to the applicable party, any corporation, company, partnership, trust, sole proprietorship or other entity or individual which: (a) is owned, controlled or managed by such party, in whole or in part (b) owns, controls or manages such party, in whole or in part, or (c) is under common ownership or control with such party, in whole or in part.

1.2 Ordering Activity acknowledges and agrees that the Product is subject to the export control laws and regulations of the United States ("Export Controls"), including the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Control, and agrees to the extent applicable, to comply with the Export Controls. Ordering Activity further agrees that (i) Ordering Activity is not an entity restricted or otherwise prohibited by the Export Controls; (ii) the Product will not be exported, re-exported or otherwise transferred to any country subject to a United States trade embargo, or to a national or resident thereof; and (iii) the Product will not be exported, re-exported, or transferred to an end-user engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

1.3 Upon Ordering Activity's issuance of an ordering document for the applicable support fees, Thycotic shall provide telephone, e-mail, and remote assistance support services for the Product ("Support"). Support shall be available Monday through Friday between the hours of 7am - 7pm US Eastern Time ("Business Hours") excluding major US Public Holidays. All Support requests shall receive a response within twenty-four (24) hours during Business Hours. Support shall entitle Ordering Activity to receive all new releases (both minor and major) of the Product ("Upgrades") which Upgrades on receipt by Ordering Activity or its Affiliates shall automatically be licensed to Ordering Activity and its Affiliates under the same terms as the Product.

2. Account responsibility

Ordering Activity is responsible for Ordering Activity's use of the Product. Ordering Activity is responsible for maintaining the confidentiality of any password for the Product provided to Ordering Activity.

3. Reserved.

4. Limited Warranty

Thycotic represents and warrants to Ordering Activity that:

4.1 The Product and Support shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other governmental requirements;

4.2 The Product will perform in compliance with applicable performance specifications set forth in its documentation for a period of one (1) year following the date of Ordering Activity's purchase of the Product pursuant to Section 1. If new Upgrades of the Product are provided to Ordering Activity, the foregoing representations and warranties in the immediately preceding sentence shall apply to such Upgrades for one (1) year following the date of Ordering Activity's receipt of the Upgrades;

4.3 The Product, including Upgrades, does not and shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware;

4.4 To the extent that the Product contains any third party software ("Third Party Software"), Thycotic has the right to grant Ordering Activity and its Affiliates the license to use the Third Party Software with the Product pursuant to the terms and conditions of this Agreement without violating the rights of any third party.

4.5 All Support and any other services (collectively, “Services”) shall be performed in a professional manner and with the standard of care and diligence in the industry (but no less than a reasonable standard of care and diligence), as well as industry standards (but no less than reasonable standards) of documentation, methodology, and control.

4.6 If the Product or Services do not comply with any of the representations and warranties set forth above, Thycotic shall, at its own expense, promptly correct the Product and/or Service, as applicable, so that it complies with all representations and warranties or replace the Product and/or Service with comparable new software or a new Service that complies with all representations and warranties. Where it is impractical to perform one of the foregoing remedies (including, without limitation, if Thycotic fails to perform such remedies within thirty (30) days of Ordering Activity’s delivery of written notice to Thycotic), Ordering Activity may terminate this Agreement upon delivery of written notice to Thycotic. Upon such termination, Thycotic shall refund the fees paid for the Product, and refund the applicable fees for the unused term of any Services and for Services not delivered in accordance with this Agreement (including any Services that do not comply with applicable representations and warranties).

4.7 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE PRODUCT AND SERVICES ARE PROVIDED TO ORDERING ACTIVITY ON AN “AS-IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS WITHOUT ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

5. Reserved.

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

10. Service Level Agreement (SLA)

10.1 Thycotic will use commercially reasonable efforts to provide Support as per the availability defined in Section 1. In the event Thycotic does not provide Support as defined in Section 1, the Ordering Activity will be eligible to receive a Service Credit as described below.

Definitions

- “Service Year” is the preceding 365 days from the date of an SLA claim.
- “Unavailable” means that the Service was not available to Ordering Activity or its Affiliates due to Support being unavailable or non-responsive.
- The “Eligible Credit Period” is a single month, and refers to the monthly billing cycle in which the most recent Unavailable event included in the SLA claim occurred.
- A “Service Credit” is a dollar credit, calculated as set forth below, that Thycotic may credit back to Ordering Activity.

10.2 Service Commitments and Service Credits

If Support is Unavailable for the Ordering Activity and its Affiliates during the Service Year, then that Ordering Activity is eligible to receive a Service Credit equal to 10% of the License fees paid for Support for the Service Year. To file a claim, the Ordering Activity does not have to wait 365 days from the day they started using the service or 365 days from their last successful claim. The Ordering Activity can file a claim any time an Unavailable event occurs. Thycotic will apply any Service Credits only against future payments otherwise due from Ordering Activity. Service Credits shall not entitle Ordering Activity to any refund or other payment from Thycotic. A Service Credit will be applicable and issued only if the credit amount for the applicable Service Year is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other customer. Unless otherwise provided in the Agreement, the Ordering Activity’s sole and exclusive remedy for any Unavailable Support is the receipt of a Service Credit or termination of Ordering Activity use of the Product.

10.3 Credit Request and Payment Procedures

To receive a Service Credit, Ordering Activity must submit a request by sending an e-mail message to sales @ thycotic.com. To be eligible, the credit request must (i) include Ordering Activity domain name in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each “Unavailable” incident; (iii) include any call or email logs (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (iv) be received by Thycotic within thirty (30) business days of the last reported incident in the SLA claim. If the Unavailable event is confirmed by Thycotic, which confirmation will not be unreasonably withheld or delayed, then Thycotic will issue the Service Credit to Ordering Activity on the next billing cycle following the Service Year in which the request occurred. Ordering Activity’s failure to provide the request and other information as required above will disqualify Ordering Activity from receiving a Service Credit.

10.4 SLA Exclusions

The Service Commitment does not apply to any Unavailability, suspension or termination of Support: (i) that result from non-adherence to the terms of the Agreement by Ordering Activity or its Affiliates; (ii) caused by factors outside of Thycotic’s reasonable control, including any force majeure event or Internet access or related problems; provided, that, if any force majeure event occurs that affects the performance of Thycotic under this Agreement, Thycotic will give prompt written notice to Ordering Activity and use commercially reasonable best efforts to avoid or remove the cause of non-performance and to perform with dispatch once the interfering conditions created by the force majeure event are removed or cease. (iii) that result from any actions or inactions of Ordering Activity, its Affiliates or any third party; (iv) that result from Ordering Activity equipment, software or other technology and/or third party equipment, software or other technology (other than third party

equipment within Thycotic's direct control); (v) arising from Thycotic's suspension and termination of Ordering Activity's right to use Support in accordance with the Agreement (collectively, the "SLA Exclusions"). If availability is impacted by factors other than those explicitly listed in this Agreement, Thycotic may issue a Service Credit considering such factors in Thycotic's sole discretion.

11. Reserved.

12. Indemnification

12.1 Subject to 28 U.S.C. § 516, Thycotic shall defend, indemnify and hold Ordering Activity and its Affiliates, and the directors, officers, employees and agents of each (collectively, "Ordering Activity Indemnitees"), harmless from and against any demands, claims and actions by third parties, and all liabilities, judgments, damages, fines, penalties, costs and expenses (including actual and reasonable attorneys' fees) incurred in connection therewith (individually and collectively, "Liabilities"), resulting from (or alleged to result from) (a) any criminal or other intentional wrongful act or omission or any act or omission of gross negligence or willful misconduct of Thycotic or its employees, agents or subcontractors; or (b) the Product in the form provided violating or infringing any copyright, trademark, patent, trade secret, data privacy right or any other proprietary rights of any third person valid under the laws of the United States or any country in which the Product is used ("Intellectual Property Rights"). Thycotic is not obligated under this section to the extent any third party claim arises from a Ordering Activity Indemnitee's breach of this Agreement or (with respect to claims related to clause (b) of this section) use of the Product in combination with any software, data, process or technology not supplied by Thycotic (where there would be no claim, but for such combination), or a Ordering Activity Indemnitee's negligence or willful misconduct.

12.2 Reserved.

12.3 Indemnification Procedure. The Ordering Activity must (i) give Thycotic prompt written notice of any such claim to avoid actual prejudice provided that the failure to notify Thycotic shall not relieve Thycotic from any liability Thycotic may have to the Ordering Activity hereunder, except to the extent such failure is prejudicial to the defense of any claims; (ii) afford Thycotic control over the defense of any such claim so long as Thycotic promptly undertakes such defense to avoid actual prejudice to the Ordering Activity with competent counsel reasonably acceptable to Ordering Activity, and under any settlement, Thycotic shall not be entitled to commit the Ordering Activity to the payment of any monetary amounts that will not be paid by Thycotic; (iii) Thycotic shall not enter into any settlement or compromise, or consent to the entry of any judgment, that includes, or in connection with which the Ordering Activity would be required to incur or admit liability, obligation, or culpability without the Ordering Activity's advance written consent; and (iv) the Ordering Activity provides reasonable cooperation to Thycotic in the defense of any such claim, at the cost and expense of Thycotic. If Thycotic fails to assume the defense of a claim subject to indemnification under this Agreement within 15 days of the Ordering Activity's notice thereof, or if within such 15-day period actual prejudice may occur if action is not taken, then at Thycotic's cost and expense, the Ordering Activity may undertake the defense or settlement of such claim. Notwithstanding any other provision herein or otherwise to the contrary, the obligations of Thycotic and Ordering Activity under this Section 12 shall survive termination of this Agreement indefinitely and shall be without dollar limit.

12.4 Intellectual Property Rights Claims. In addition to, and not in limitation of the foregoing, if the Product becomes, or in Thycotic's reasonable opinion based on the advice of experienced and knowledgeable legal counsel, is likely to become, the subject of a claim that the Product violates or infringes any Intellectual Property Rights, Thycotic may, at its option and expense, either: (i) procure for Ordering Activity the right to continue exercising its rights hereunder to the Product or (ii) replace or modify the Product so that it becomes noninfringing but remains functionally equivalent. If neither of the foregoing alternatives provide an adequate remedy in Thycotic's or Ordering Activity's reasonable judgment, then Ordering Activity may terminate all or any part of the use by Ordering Activity of the Product and Thycotic will equitably refund the prorated amounts paid by Ordering Activity for the terminated use of the Product that Ordering Activity will no longer receive under this Agreement.

13. Reserved.

14. Reserved.

ADDITIONAL PRODUCT DESCRIPTIONS:

The following line items are priced via a calculation as outlined below:

PART NUMBER	DESCRIPTION	ADDITIONAL DESCRIPTION
SS-SPT-1YR	Secret Server Installed - Support - 1 Year	To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For renewals, reach out to EC America.
SS-SPT-2YR	Secret Server Installed - Support - 2 Year	To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 2 year prepaid maintenance support renewals, multiply full year support cost result by 2. For renewals, reach out to EC America.
SS-SPT-3YR	Secret Server Installed - Support - 3 Year	To Calculate: add up the Secret Server Edition license cost for the customer with

		the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 3 year prepaid maintenance support renewals, multiply full year support cost result by 2.7. For renewals, reach out to EC America.
SS-SPT-4YR	Secret Server Installed - Support - 4 Year	To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 4 year prepaid maintenance support renewals, multiply full year support cost result by 3.5. For renewals, reach out to EC America.
SS-SPT-5YR	Secret Server Installed - Support - 5 Year	To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 5 year prepaid maintenance support renewals, multiply full year support cost result by 4.25. For renewals, reach out to EC America.
SS-SUB-ENT	Secret Server Install-Sub-Enterprise	Yearly subscription for the ENT edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ENT subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.
SS-SUB-ETP	Secret Server Install-Sub-Enterprise Plus	Yearly subscription for the ETP edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ETP subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.
SS-SUB-PRO	Secret Server Install-Sub-Professional	Yearly subscription for the PRO edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the PRO subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.
SS-SUB-USR	Secret Server Installed - Sub - User Count	Yearly subscription for the user count in all Secret Server Installed Subscriptions. Enter the number of users in the quantity field. User Price is included in the edition price calculation.

TIBCO Software Federal, Inc.
3141 Fairview Park Drive, Suite 600
Falls Church, VA 22042

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **TIBCO Software Federal, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

TIBCO SOFTWARE FEDERAL, INC.

TIBCO SOFTWARE FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS

END USER LICENSE AGREEMENT FOR U.S. FEDERAL GOVERNMENT BUSINESS ("AGREEMENT")

PLEASE READ CAREFULLY: THIS AGREEMENT IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR) AND IS APPLICABLE TO TIBCO SOFTWARE LICENSES, EQUIPMENT, CLOUD OR HOSTED SERVICES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE "PRODUCTS") ACQUIRED BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES ("GOVERNMENT" or "GOVERNMENT END USERS"), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY, WITH GOVERNMENT END USERS, "GOVERNMENT CUSTOMER"). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES ("SERVICES") ACQUIRED FROM TIBCO SOFTWARE FEDERAL, INC. ("TSFI") RELATING TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, IF PRODUCTS AND/OR SERVICES ARE BEING ACQUIRED FROM TSFI PURSUANT TO A NEGOTIATED AGREEMENT, THAT NEGOTIATED AGREEMENT SHALL CONTROL.

1. The following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) are contrary to applicable Federal law. In the event any provision of this Agreement is contrary to or unenforceable under applicable Federal law, the Federal law shall control. For Government End Users, this Agreement supersedes and replaces any shrink wrap, click wrap, or click through terms ("Automated Terms") that may be presented with Products or Services and any such Automated Terms shall not apply.

2. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in Appendix A. "Order Form" means any purchase order or similar document, written agreement, or a web store or website order or registration requesting Products or Services. "Purchase Date" means the date the Order Form is accepted by us and in the case of a web store or web site transaction, the date of your download or access of a Product. If proprietary source code is included as part of the standard delivery of a Product and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. "Updates" means Product bug fixes, enhancements, and updates, if and when made generally available by us as part of Maintenance. "We" or "Us" refers to TSFI, a subsidiary corporation of TIBCO Software Inc. ("TIBCO"). "You" or "Your" refers to the Government Customer acquiring Products or Services pursuant to this Agreement.

3. Alpha, Beta, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed at no charge for demonstration or evaluation purposes or for alpha or beta testing, then, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (a) use of the Products shall be solely for such purposes, (b) the Products shall not be used or deployed in a production or development environment, and (c) such use shall automatically terminate upon the earlier of (i) thirty (30) days from the date TSFI grants the right to install or access the Product, (ii) TSFI's notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended. If the Products are provided or accessed for Developer Evaluation, (a) use of the Products solely shall be for development evaluation purposes, (b) such use shall not be in a Production environment and (c) such use shall automatically terminate upon the earlier of (i) ninety (90) days from the date TSFI grants the right to receive, install or access the Product, (ii) TSFI's notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended.

4. License Grant. The Products are the property of TIBCO Software Inc. ("TIBCO") or its licensors and are protected by copyright and other laws. TSFI is a subsidiary of TIBCO. While TIBCO continues to own or have license rights to the Products, TSFI is authorized to and hereby grants you a limited, non-transferable (except as permitted herein), non-exclusive license, subject to the terms and conditions of this Agreement, to use the Number of Units set forth in the Order Form solely for your internal business use.

5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:

- Alpha, Beta and Evaluation - thirty (30) days
- Developer Evaluation – ninety (90) days
- Hosted Services - one (1) year
- Cloud - one (1) year
- Software purchases on a term limited basis - one (1) year

If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must immediately cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

7. Equipment Purchase.

A. Purchase. When we issue you a quotation and accept your Purchase Order for the purchase of Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described therein. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. For a feature, conversion or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, the return of the Equipment or parts forms part of your consideration to us and we reserve all rights under applicable law regarding said Equipment or parts.

B. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery by us to our designated freight carrier, FCA TIBCO's premises (Incoterms 2000). All freight, insurance and other shipping expenses

shall be paid to the freight carrier by us. Any shipping or handling charges to be paid by you shall be as identified on the accepted Purchase Order. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you via the Hosted services as soon as we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider failures or delays ("Force Majeure"). Hosted Services are provided in accordance with applicable laws and government regulations.

9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOCommunity. You agree to and accept the Terms of Use for TIBCOCommunity (http://www.tibcommunity.com/themes/tibcotucon/resources/html/terms_of_use.html) if you use the credentials to access the TIBCOCommunity site EXCEPT that any provision of the Terms of Use for TIBCOCommunity that is contrary to, or unenforceable against a Government End User under, applicable Federal law shall be of no effect for Government End Users; for Government End Users, Federal law shall apply regardless of any choice of law or venue language in the TIBCOCommunity Terms of Use. Certain Software Products may be provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO- approved third party service provider ("Provider") for the Cloud and for the technical operation of the content of your account.

10. Hosted Services and Cloud Restrictions.

A. In connection with your use of Hosted Services or a Cloud, you shall, in addition to the Restrictions below (i) be responsible for your users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and the means by which you acquire and disclose your data, (iii) not store or transmit infringing, libelous, or otherwise unlawful or tortious material or malicious code, nor store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud, (v) use reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or their related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. In the event that you receive any notice claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates a third party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO's General Counsel.

B. You will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider's or TIBCO service in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. No software or content provided by you or your users in connection with your use of Hosted Services or the Cloud may contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. Except as required by applicable law, we are not responsible for Provider services, unauthorized access to your data or content, or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.

11. Restrictions.

To the extent consistent with the provisions of FAR 52.227-19 (Commercial Computer Software License), the following restrictions shall apply to Government End Users. Where a restriction is inconsistent with the provisions of FAR 52.227-19, the FAR provisions shall control and the restriction shall not apply to Government End Users. For other customers, the restrictions shall apply.

A. You shall not (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) use any Software not listed in an Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (f) use the Products in connection with ultrahazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you or a third party; or (g) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Products. You may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, you agree to observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist with or conduct such activity on your behalf and at your expense.

B. Any additional license parameters applicable to particular Products are set forth in Appendix B.

12. **Proprietary Notices.** The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, Documentation and Materials; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

13. **Extraordinary Corporate Event.** For Government End Users, the rights contained at FAR 52.227-19 shall apply in lieu of the following provision. For customers other than Government End Users, to the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities which were added to your organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by our respective duly authorized officers.

14. **Maintenance.**

A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) does not apply. THE TERMS OF ANY MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Cloud or Hosted Services), is provided under the policies set forth in the Maintenance Program Guide attached as Appendix C for Products other than Equipment, and at Appendix D for Equipment.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been paid when properly due and owing.

15. **Consulting Services.**

A. You may procure installation, configuration, training or other consulting or support services ("Consulting Services") either through a Purchase Order issued against a Consulting Services quotation, or through a work order executed by authorized representative of both parties ("Work Order"). Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6).

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one (1) copy received by each attendee and may not be duplicated.

C. In the event that you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you are granted a limited, non-transferable and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use; provided, however, that the copyright notices and any other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

16. **Limited Warranty.**

The following Limited Warranty provisions shall apply to Government End Users to the extent permitted by applicable Federal law, including FAR

12.404(b)(2); to the extent that these limitations are not permitted or are unenforceable under applicable Federal law, they shall be of no force or effect for Government End Users. For all other customers, the following Limited Warranty provisions shall apply.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN PRODUCTS

THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS", IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE PRODUCTS WITH WHICH IT IS PROVIDED TO YOU. SUCH THIRD PARTY SOFTWARE IS PROVIDED SOLELY AS AN ACCOMMODATION TO YOU AND YOU ARE UNDER NO OBLIGATION TO USE SUCH THIRD PARTY SOFTWARE. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY PRODUCTS OR SERVICES, THAT THE PRODUCTS WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS, THAT ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE PRODUCT FUNCTIONALITY OR SERVICES WILL MEET YOUR REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY ON TSFI'S OR TIBCO'S BEHALF.

17. Indemnity. For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.

For customers other than Government End Users, if you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party. We will indemnify and hold you harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against you in a final judgment provided that you promptly notify us in writing of such claim, we have the exclusive right to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option and expense, shall (a) procure for you the right to continue to use the Software, or (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent that (x) any claim is based on or attributable to modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

18. Limitation of Liability.

FOR GOVERNMENT END USERS, THE FOLLOWING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAW. TO THE EXTENT THAT THESE PROVISIONS ARE INCONSISTENT WITH APPLICABLE FEDERAL LAW, THEY SHALL BE OF NO FORCE OR EFFECT WITH REGARD TO GOVERNMENT END USERS.

FOR CUSTOMERS WHO ARE NOT GOVERNMENT END USERS, THE FOLLOWING SHALL APPLY:

A. EXCEPT AS PROVIDED UNDER THE INDEMNITY ABOVE; OR IN CONNECTION WITH THE MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, TRADE SECRETS; DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR INTENTIONAL OR GROSS NEGLIGENCE (THE "EXCLUDED MATTERS"), IN NO EVENT WILL EITHER PARTY OR TIBCO'S LICENSORS BE LIABLE FOR ANY LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, LOST REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, DOWNTIME COSTS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPE OF DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PRODUCTS, OR THE PROVISION OF ANY MAINTENANCE, CONSULTING SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES OR DAMAGES.

B. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY'S LIABILITY TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING ACTIVE OR PASSIVE NEGLIGENCE), BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, EXCEED THE GREATER OF FIFTY THOUSAND DOLLARS (\$50,000 USD) OR THE PRICE PAID BY YOU UNDER THE APPLICABLE ORDER FORM. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to EXPRESS remedies provided in the Agreement.

C. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED REMEDY OR LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

19. Confidentiality.

For Government End Users, confidentiality obligations shall be pursuant to the Freedom of Information Act and other applicable Federal law, and Sections 19A through 19E, below, shall not apply. TIBCO software Products delivered under this Agreement constitute commercial computer software products as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-19; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial and confidential or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these data may be reproduced by the Government with the express limitation that they will not, without written permission of TSFI, be used for purposes of manufacture nor disclosed outside the Government.

For customers other than Government End Users, the following provisions shall apply:

A. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data (as defined in Section B below) and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other's Confidential Information. The parties further agree that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations ("Protected Data"), we agree to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at http://www.tibco.com/customer_privacy_security_statement.jsp (the "Statement"). The policies and procedures set forth in the Statement as well as those set forth in the Data Protection Policy Statement at http://www.tibco.com/resources/data_protection_statement.pdf are in place to meet our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by you of Products or Materials shall not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business to business communications in connection with this Agreement. In the event you or your users wish to opt-out from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at <http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af5338448782d1fa356e>. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that you provide to us about our Products or their performance (collectively, "Feedback") shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of any kind to you, and you waive any rights whatsoever in or to all Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licensor Software, Documentation and Materials in any form in violation of applicable export or import laws.

21. Government Use. The Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is restricted according to the terms of this Agreement. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS AGREEMENT, AND AS REQUIRED BY FAR 12.302(b), THE FOLLOWING PROVISIONS FOUND AT FAR 52.212-4 SHALL APPLY:

- (1) Assignments; (2) Disputes;
- (3) Payment (except as provided in subpart 32.11); (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

22. Entire Agreement. For Government End Users, to the extent permitted by applicable Federal law and regulation, this Agreement constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties.

For other customers, this Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties. Except for additional terms you have agreed to in connection with our web stores or web sites,

none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary.

Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

23. Termination.

Between TSFI and Government End Users, termination shall be pursuant to FAR 52.212-4(l) (Termination for the Government's convenience) and 52.212(m) (Termination for cause); no other termination rights shall apply, including paragraphs 23(A) through (F). Nothing in the foregoing, however, shall be understood to grant the Government the right to use Products or Services acquired on a term basis beyond the term set forth in the applicable Purchase Order.

For customers other than Government End Users:

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party, (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for Consulting Services, upon ten (10) days prior written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have pre-paid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider's termination without cause (e.g. a copy of Provider's notice of termination). Following receipt of such written notice, we will refund the pre-paid unearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the unearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the unearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, or Hosted Services under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed such Software, Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials.

F. Termination of this Agreement, any license, Cloud, or Hosted Services, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled "Termination", "Limited Warranty" or "Indemnity", all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. The parties' rights and obligations under this section and sections entitled "Limited Warranty", "Indemnity", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General", "Governing Law" and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version of or derivative of the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager and TIBCO® ActiveFulfillment (and each of the foregoing, when included in any Bundle or Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that you may only use in conjunction with the Software and may be subject to additional terms as set forth in Appendix B.

26. General.

A. As between TSFI and the Government, interest in connection with this Agreement shall be pursuant to the provisions of FAR 52.212-4(i)(6).

B. As between TSFI and other customers: All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date or, for any other amounts coming due hereafter, net 30 from our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and

you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of our income tax. You agree to pay all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. Except as set forth in the sections entitled "Limited Warranty", "Indemnity" and "Termination" all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent (1 ½%) per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this Agreement to the extent caused by Force Majeure.

C. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also being sent to that party's General Counsel.

27. Governing Law. For Government End Users, this Agreement shall be governed by applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, with venue in the Federal courts of competent jurisdiction. For other customers, to the extent permitted by law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded from application hereto.

Addenda:

Appendix A	Definitions
Appendix B	Product Parameters
Appendix C	Product Maintenance
Appendix D	Equipment Maintenance

TSFI EULA Appendix A -- Definitions

"Academic Bundle" means a Bundle which is licensed to an accredited education institution solely for educational use, teaching and individual student or faculty non-funded research purposes in Non-Production. Use in Production, or for the purpose of funded research or for any classes offered electronically via the internet or otherwise (i.e.: "on-line" classes) is prohibited. For the purposes of an Academic Bundle, Licensee may provide access to the Licensor Software products by students who are Named Users, subject to such Named Users agreeing to be bound by terms at least as protective of Licensor as the terms of this Agreement.

"Affiliates" means entities, regardless of corporate status, controlled by, controlling or under common control with Licensor or Licensee, respectively, or officers, directors, shareholders, employees or agents of any of the foregoing.

"Broker" means the component within the applicable Site Copy which schedules work for Engines in a GridServer® or FabricServer® environment. GridServer environment means at least one TIBCO DataSynapse GridServer® Broker and a pool of servers with the TIBCO DataSynapse GridServer® Engine executing grid services. FabricServer environment means at least one TIBCO DataSynapse FabricServer® Broker and a pool of servers with the TIBCO DataSynapse FabricServer® Engine managing enterprise applications.

"Bundle" means a collection of Licensor Software, listed in Licensor's quotation or price book, to be sold together under a collective name such as "XXX Bundle" which consists of X, Y and Z. The Licensor Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Licensor Software separately licensed by Licensee. In no event may the Licensor Software which comprises a Bundle be used on a standalone basis. A "Bundle" is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, such breach must be cured within ten (10) days of Licensor notifying Licensee

in writing of the breach. In addition to the foregoing, where Bundle is used as the Unit type, Licensee's use is limited to the Number of Units and

Unit type for each component which comprises the Bundle, as set forth in the bill of material for such Bundle.

"CICS Region" means a subdivided mainframe address space managed by CICS for resource allocation, resource sharing, and transaction execution, of which the resource definitions include the TIBCO EMS Client for z/OS.

"Cloud" means an internet based computing service offered by a Licensor approved third party, which permits users to make use of a hosted hardware and software environment, which includes, among other components, Licensor Software set forth in an Order Form.

"Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Licensor Software at any single point in time.

"Connection" means any network link or session established with Licensor software, directly or indirectly to any other entity, including but not limited to software, firmware or hardware. For TIBCO Rendezvous® and TIBCO SmartSockets®, "Connection" means any network protocol link established with such Licensor Software (directly or indirectly) to any other entity, including but not limited to software, firmware or hardware.

For TIBCO ActiveSpaces®, "Connection" means any session established directly or indirectly to a TIBCO ActiveSpaces® Metaspace cluster instance.

For TIBCO DataSynapse Federator™, "Connection" means a web service session established to a TIBCO DataSynapse GridServer® Manager Instance or a TIBCO DataSynapse FabricServer® Manager Instance; for TIBCO DataSynapse™ Analytics or TIBCO® Cloud Analytics, a database session established to a TIBCO DataSynapse GridServer® Broker reporting database or TIBCO Silver™ Fabric Manager reporting database; and for TIBCO® Data Quality Service Engine Named Application, any link or session established directly or indirectly (through any other middleware application) which calls to a named third party software application.

"Consumer Price Index" means (unless otherwise set forth in this Agreement or an Order Form) the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U).

"Connected Processor" means any processor that produces information consumed by the relevant Licensor Software product (excluding processors on devices such as routers, switches, proxies, HTTP or application servers configured to substantially pass-through information or messages to Licensor Software).

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

"Developer" means a Named User of a Licensor Software product other than for use only in Non-Production.

"Development License" for TIBCO Spotfire® Developer or TIBCO Spotfire DecisionSite® Developer means use by a Developer in accordance with the Documentation in Non-Production for the purposes of configuring analyses created with TIBCO Spotfire products and/or extending the TIBCO Spotfire product platform. The Development License includes the right to use resulting developments in conjunction with Licensee's right to use Licensor Software for Production purposes.

"Documentation" means text material that accompanies an item of Licensor Software on delivery, describing how to make use of that software.

"Engines" means for GridServer products a single thread that processes tasks or services in a first in, first out (FIFO) queue, and for FabricServer products a single agent that manages the deployment and performance of an application. Typically, only a single engine runs on a single cpu/core so that the number of engines in the grid is the same as the number of cpu's/cores in a GridServer or FabricServer environment.

"Enablement License" means for use in connection with and for up to the Number of Units licensed of the TIBCO DataSynapse™ Licensor Software which contains the word "Edition" in the product name, and if a) an Application Enablement License, a license to deploy JavaEE applications, built on the applicable third party application server, or b) for an Enterprise Enablement License, a license to deploy or integrate with the applicable third party application, or in connection with Command Lind, to deploy custom or external applications. Enablement Licenses do not include Engines required for running third party applications or any integration software to mesh or permit the Licensor Software to function with such third party applications.

"Enterprise" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Enterprise in the Order Form, to be deployed by Licensee until the Enterprise Term Expiration Date set forth in the Order Form, (the "Enterprise Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Enterprise Term, Licensee's right to deploy shall not extend to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Enterprise Term, written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Enterprise Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Equipment" means a hardware appliance, obtained from or through Licensor, in which Licensor has caused the Licensor Software to be embedded, and which is listed on an Order Form under License Type "Lease" or "Purchase". Equipment shall have the same meaning as Licensor Software where Licensor Software is or has been used elsewhere in this Agreement. Licensor Software embedded in the Equipment is licensed solely to enable the Equipment to function in accordance with its Documentation.

"Extraordinary Corporate Event" means a corporate transaction which results in Licensee divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Licensee or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Licensor Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.

"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Licensor Software is installed or otherwise accessed by Licensee. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hosted Services" means online, internet based computing services provided by Licensor.

"Instance" means the smallest functionally-complete copy of Licensor Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers.

For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon, where each daemon is an operating system process with a unique process id.

"License Type" means the environment(s) in which the Licensor Software may be used (including without limitation, Production and/or Non-Production, Cloud or Hosted Services).

"Licensor Software" means the most current, generally available, object code version (or, in the case of Cloud, a machine and or disk image) of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates (as defined in the Maintenance Program Guide located at <http://www.tibco.com/services/support/default.jsp>) provided under Maintenance. Licensor Software does not include multiple Platforms if the software product is licensed on a Platform specific basis as designated in the Licensor Software product name or listed in an Order Form or purchase order. Licensor Software includes TIBCO Spotfire® Web-Based Training products and excludes TIBCO® Data Quality Postal Directory(ies) as set forth in an Order Form. Where the terms "TIBCO Software", "Spotfire Software", "TIBCO Spotfire Software", or "Software" (in connection with a Licensor click-wrap End User License Agreement, or Licensor acquired company license agreements) are being or have been used, they shall have the same meaning as Licensor Software.

"Managed Endpoints" means the number of Processors running instances of TIBCO ActiveMatrix BusinessWorks™ or other third party service implementations (e.g. Java or .NET components) that are being managed by TIBCO ActiveMatrix® Policy Manager.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Licensee's use of the Licensor Software, excluding Output.

"Module" means Licensor Software that is licensed to add functionality or capabilities in conjunction with an underlying Licensor Software product and may only be used in conjunction with the relevant underlying Licensor Software product. So long as Licensee holds a valid license in the underlying Licensor Software product, Licensee may use a reasonable number of copies of the Module to support the same business as the underlying Licensor Software product, but subject to any applicable site, Project or other business limitations or restrictions applicable to the underlying Licensor Software product. Licensee's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Licensor Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Named User" means an identifiable individual, not necessarily named at the time of a license grant, designated by Licensee to access the Licensor Software, regardless of whether or not the individual is actively using the Licensor Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Licensee to access the Licensor Software or b) once he or she has accessed the Licensor Software. In the case of TIBCO Formvine®, identifiable individuals will be counted as Named Users in accordance with the TIBCO Formvine® Licensor Software product Documentation. In the case of TIBCO® Nimbus Control, Named Users account types are further defined in the TIBCO® Nimbus Control Licensor Software product Documentation in the section entitled "Summary of User Rights".

"Non-Production" means a non-operational environment into which the Licensor Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

"Number of Units" means the cumulative number of copies of Licensor Software licensed for use by type of Unit, as set forth in this Agreement, an Order Form or in a purchase order, and including, if applicable, the current number of copies as reported by Licensee upon expiration of a Project or Enterprise Term.

"Orders" mean the total number of unique transactions submitted, stored in and counted by the applicable Licensor Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Order Form" means any written order for Licensor Software or services, including, without limitation, a purchase order, Work Order, Statement of Work, Order Form or other form of ordering document delivered to Licensor, which is subject to, and incorporates by reference, the terms and conditions of this Agreement, and to which no other terms shall apply.

"Output" means Confidential Information of Licensee that has been input in the Materials for Licensee's use of the Licensor Software.

"Physical Processor" means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.

"Platform" means for each discrete Licensor Software product, the operating system, hardware and/or environments (whether virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Licensor Software product name.

"Postal Directory" means a copy of the applicable product installed on a single Server.

"Processor" means a licensing Unit type for the Licensor Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy.

"Processor Bundle" means the Number of Units as determined by the number of Processors on which the Licensor Software licensed as a Bundle is licensed to run.

"Processor Source Locked" means the number of Processors the Licensor Software is installed on multiplied by the number of instances of a source system or database regardless of how many Processors are used by the source system or databases.

"Product Lines" means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family's then current list price. Licensor does not permit aggregation of products, services, purchase or license models and cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

"Production" means an operational environment into which the licensed Licensor Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

"Project" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Project in the Order Form, to be deployed by Licensee until the Project Term Expiration Date set forth in the Order Form, (the "Project Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Project Term, Licensee's right to deploy an unlimited Number of Units does not extend beyond the scope of the Project set forth in the Order Form, or to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Project Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on a Project basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Purchase" means when used in connection with "Equipment", the purchase of the hardware appliance, where Licensor transfers title of the hardware appliance to Licensee. The Licensor Software is licensed under the terms of this Agreement and not sold. Licensor (or a third party) owns the Licensor Software.

"Read-only User" means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Licensor Software at any given time, designated by Licensee to access the Licensor Software for the sole purpose of searching for and viewing data.

"Record" means a unique data item stored in and counted by the applicable Licensor Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Server" means a single computer performing common services for multiple other machines.

"Server Instance" means a computer with one (1) CPU, unless otherwise agreed in writing, performing common services for multiple other machines.

"Site Copy" means the number of copies of the Licensor Software licensed for use at the physical location of the Licensee entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

"Spare" means a unit of Equipment identified by use of the word "Spare" in its product name, which is kept in storage at the same location as Equipment in productive use. In the event Equipment in productive use becomes inoperable, Licensee may set up and configure a Spare for productive use, until the original Equipment becomes operational again, but in no event for a period greater than three (3) months, without first obtaining Licensor's written consent.

"Third Party Software" means third-party software identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation and in lieu of Licensee purchasing a license to Third Party Software directly from the third party vendor.

"TIBCO Processing Unit" or "TPU" means a Unit for measuring computing power as designated in the applicable TPU Conversion Table located and incorporated by reference at <http://www.tibco.com/software/cloud-instance-type-tpu-conversion-table.jsp> and as are set forth in an Order Form.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"Trading Partner" means an entity or individual with whom the Licensee engages in accordance with this Agreement in electronic commerce by means of Licensor Software and, in the case of TIBCO® KPSA, TIBCO® KxDR and TIBCO Kabira® Licensor Software products, an individual with whom Licensee engages to provide services, which may include, electronic commerce and or general service activation and provisioning of wireline and wireless packages for the exchange of data and content.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Licensor Software may be deployed (including, without limitation, Processor, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"User" means an employee of Licensee who is authorized by Licensee to use the Licensor Software in accordance with this Agreement. The number of Licensee computers on which the Licensor Software is installed shall not exceed (but may be less than) the number of licensed Users.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors.
Special Provisions Regarding Processor Licensing:

Certain Licensor Software is licensed by the Unit type "Processor." The following describes how to calculate the number of Processor Units which should be licensed in a Virtualized Environment and in all other environments.

Calculation

The number of Processor Units of Licensor Software required to be licensed shall be calculated as follows:

1. In a Virtualized Environment, the number of Virtual Processors shall be calculated by following the steps below:

1. For each Virtual Machine running the Licensor Software, the number of Virtual Processors shall be counted in increments of whole numbers. For clarification, the lowest unit of measurement for Virtual Processors is one; any fraction shall be rounded upward to the next whole number.

2. If the number of Virtual Processors of a Virtual Machine can increase or decrease, then for the purpose of counting Virtual Processors, the number of Virtual Processors shall be the maximum whole number of Virtual Processors that could ever be assigned to the Virtual Machine running the Licensor Software.

3. Add the total number of Virtual Processors across all Virtual Machines within the entire Virtualized Environment that runs the Licensor Software.

2. In all other environments (e.g. running on physical machine(s) or if a Virtual Processor can run on more than one Physical Processor at a time), the number of Physical Processors shall be calculated by following the steps below:

1. For each Licensor Software, the relevant partition boundary shall be set:

(a) where the allocation is defined by Fixed Partitioning, to include all Physical Processors that could ever execute the Licensor Software. (b) where the allocation is not defined by Fixed Partitioning, to include all Physical Processors on the physical machine.

2. Count the total number of Physical Processors for the relevant partition boundary for each physical machine, and aggregate the counts across all physical machines within the entire environment that runs the Licensor Software.

3. For all environments, if multi-threading is enabled for the underlying physical cores, then the total count of Physical Processors or Virtual Processors, as the case may be, shall be multiplied by 0.5.

1. If the multi-threading function is disabled, then a multi-threaded core shall be treated as a single-threaded core, in which case, (a) when calculating the number of Processors in a Virtualized Environment, the 0.5 multiplier shall be inapplicable; and (b) when calculating the number of Processors in all other environments, the number of cores instead of threads shall be the number of Processors Units required to be licensed and the 0.5 multiplier shall be inapplicable.

4. Any fraction shall be rounded upward to the next whole number.

The above calculation yields the total number of Processor Units required to be licensed for the Licensor Software.

Appendix B – License Parameters

Effective April 1, 2012 – To the extent that TIBCO products contain Java SE, use of the Java SE Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at <http://www.oracle.com/technetwork/java/javase/documentation/index.html>.

Effective January 20, 2012 – TIBCO Formvine®

The module of the Licensor Software called TIBCO Formvine® Project Tools allows Licensor to create and manage TIBCO Formvine® projects, and to view, edit and export the data gathered through a Formvine® project's online form. Only the number of Named Users listed in an accepted Order Form which includes the Licensor Product named TIBCO Formvine® Project Tools shall be entitled to use the "Project Tools" as defined in the Documentation.

The module of the Licensor Software called TIBCO Formvine® Integration Add-on allows software other than TIBCO Formvine® Project Tools to exchange information with the TIBCO Formvine® Server by way of the server's application programming interfaces ("Formvine® APIs"). Only to the extent that an accepted Order Form includes the Licensor Product named TIBCO Formvine® Integration Add-on, shall Licensee have rights to use software other than the licensed TIBCO Formvine® Project Tools in conjunction with the Formvine® APIs.

Effective December 1, 2011 – The following definition of Processor is being retired and will only apply to contracts entered into on or before November 30, 2011:

"Processor" means a central processing unit ("CPU") on which the Licensor Software is licensed to run. For purposes of counting Processors on multicore chips, the number of Processors is the number of CPUs times the number of cores multiplied by .75.

Effective July 1, 2010 - TIBCO Foresight™ HIPAA Validator® Desktop; TIBCO Foresight™ Community Manager®; TIBCO Foresight™ Instream®; TIBCO Foresight™ Transaction Insight®; TIBCO BusinessConnect™ EDI Protocol HIPAA Edition powered by Instream® ("Editorial Content Products")

The Editorial Content Products contain CPT Editorial Content, which is licensed from the American Medical Association ("AMA"). The AMA holds the copyright to CPT Editorial Content and the registered trademark "CPT". Provision of updated CPT Editorial Content in the Editorial Content Products is dependent on continuing contractual relationship between Licensor and the AMA. The following terms apply to end users of the Editorial Content Products:

(1) The license granted to Editorial Content Products is a nontransferable, nonexclusive license, for the sole purpose of internal use by Licensee and Licensee must ensure that anyone with authorized access to the Editorial Content Products will comply with the provisions of Licensee's license agreement with Licensor. Licensee is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party any copy or portion of the Editorial Content Products.

(2) Notices of proprietary rights, including trademark and copyright notices in the Editorial Content Products, may not be removed from any permitted back up or archival copies made.

(3) CPT Editorial Content as contained in the Editorial Content Products is provided "as is" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or any guarantee or warranty that the CPT Editorial Content will meet Licensee's requirements. The AMA's sole responsibility is to make available to Licensor replacement copies of the CPT Editorial Content if the data is not intact. The AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in CPT Editorial Content.

(4) U.S. Government Rights. The Editorial Content Products include CPT Editorial Content, which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60654. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited right restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

Effective July 1, 2010 – The following Licensor Software products are each licensed for the sole purpose set forth below:

TIBCO® KPSA – Mobile for provisioning and activating telecommunication services and mobile access networks (such as GSM, EDGE, UMTS, GPRS, and HSPDA) each for Licensee's mobile telecommunication subscribers. TIBCO® KPSA – Broadband – for provisioning and activating telecommunication services and broadband access networks (such as DSL, optical fiber, and WiMAX) each for Licensee's broadband subscribers. TIBCO® KPSA Load Balancer – Mobile – for distributing traffic across TIBCO KPSA – Mobile nodes. TIBCO® KPSA Load Balancer – Broadband – for distributing traffic across TIBCO KPSA – Broadband nodes. TIBCO® KxDR – Mobile – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by mobile network elements and service platforms serving Licensor's mobile subscribers. TIBCO® KxDR – Broadband – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by broadband network elements and service platforms serving Licensor's broadband subscribers. TIBCO® KPSA – Order Management – for managing the end-to-end lifecycle of Licensee's customer requests for the delivery of telecommunication products as captured from order entry systems (excluding the provisioning and activation of telecommunication services and mobile or broadband access networks).

Effective May 27, 2010 - Licensor Software products TIBCO BusinessEvents™, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, TIBCO LogLogic® Enterprise Virtual Appliance, TIBCO LogLogic® Compliance Manager, TIBCO LogLogic® Security Event Manager Appliances, TIBCO LogLogic® Log Management Enterprise Appliances (including but not limited to TIBCO LogLogic LX Appliances and TIBCO LogLogic® ST Appliances) and TIBCO LogLogic® Log Management Mid-Market Appliances (TIBCO LogLogic® MX Appliances), (and each of the foregoing when included in a Bundle or as Embedded/Bundled products) are subject to a restricted license and contain third party proprietary code that Licensee or Partner can only use in conjunction with the Licensor Software.

Effective May 1, 2010 – TIBCO DataSynapse™ Analytics is an Embedded/Bundled product, which includes, in part, TIBCO Spotfire® Web Player and TIBCO Spotfire® Professional as bundled Licensor Software. In addition to Embedded/Bundled Products restrictions, Licensee's use of these bundled products in connection with TIBCO Spotfire® Analytics is limited to 25 Named Users of TIBCO Spotfire Web Player, 5 Named Users of TIBCO Spotfire Professional.

Effective February 18, 2010 – All TIBCO iProcess Spotfire® Add-on Web User is licensed solely to increase the number of TIBCO Spotfire® Web Player Named Users included in and for use in connection with the TIBCO iProcess Spotfire® Add-on Bundle. TIBCO iProcess Spotfire Add-on Web User may be used solely in connection with the TIBCO iProcess Spotfire Add-on Bundle.

Effective May 12, 2009 – All TIBCO Spotfire® Application Data Services products shall be used exclusively with TIBCO Spotfire® Analytics Server or TIBCO Spotfire® Server and shall only be accessed via ODBC or JDBC.

Effective June 1, 2007 – TIBCO iProcess™ Decisions Studio and TIBCO iProcess™ Decisions must be used with TIBCO iProcess™.

Effective April 1, 2001 – "Embedded/Bundled Products" – Some Licensor Software embeds or bundles other Licensor Software. Use of such embedded or bundled Licensor Software is solely to enable the functionality of the Licensor Software licensed under this Agreement, and may not be used or accessed by any other Licensor Software, or for any other purpose.

Effective December 24, 2000 – TIBCO BusinessPartner / Effective October 17, 2006 – TIBCO BusinessConnect Remote - Licensee may sublicense to third parties ("Partners") up to the total Number of Units of TIBCO BusinessPartner or TIBCO BusinessConnect Remote, provided that for every such sublicense, the Number of Units Licensee is licensed to use shall be reduced by the same number, and provided further that prior to delivery of TIBCO BusinessPartner or TIBCO BusinessConnect Remote to a Partner, such Partner agrees in writing (a) to be bound by terms and conditions at least as protective of Licensor as the terms of this Agreement, (b) that TIBCO BusinessPartner or TIBCO BusinessConnect Remote be used solely to communicate with Licensee's implementation of TIBCO BusinessConnect, and (c) for such Partner to direct all technical support and Maintenance questions directly to Licensee. Licensee agrees to keep records of the Partners to which it distributes TIBCO BusinessPartner or TIBCO BusinessConnect Remote, and to provide Licensor the names thereof (with an address and contact name) within sixty (60) days of the end of each calendar quarter.

TSFI EULA Appendix C – Maintenance Program Guide

1 Overview

TIBCO is dedicated to the success of our customers by providing timely responses to problems with TIBCO software products. TIBCO's highly skilled support engineers are well versed in TIBCO's software products. TIBCO's support services group is a global organization that uses a "follow-the-sun" model to ensure that support is available whenever it is needed. Support centers are located around the world to support all the TIBCO product lines.

In the event you have contracted for Maintenance Services at the Bronze Level, the supported time zone assigned for Service Hours will be based on the TIBCO software delivery address for your company.

All Equipment Maintenance is subject to the terms of the Equipment Maintenance Program (Appendix D).

2 Maintenance Service Levels

2.1 TIBCO Maintenance Service Levels

MAINTENANCE LEVEL	Updates Only	Bronze (includes Updates)	Silver (includes Updates)
Service Hours:	N/A	9am-5pm, Monday-Friday Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	N/A	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 Hours
Target Resolution:	N/A	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
TIBCO DirectConnectSM Manager (DCM) Support	N/A	N/A	N/A
Authorized Contacts:	N/A	Unlimited	Unlimited

2.2 Spotfire, DataSynapse, and Foresight Maintenance Service Levels

MAINTENANCE LEVEL	Bronze term (includes Updates)	Silver (includes Updates)

Service Hours:	9am-5pm, Monday-Friday Service Hours are based on CET, UTT/GMT, GMT+5:30, GMT+8:00, GMT+9:00, and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 hours
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Number of Contacts:	Unlimited	Unlimited

3 Maintenance

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, "Licensor Software," shall include "TIBCO Software," "Spotfire Software" or "Software" as defined in any such agreement. "Customer," as used below, shall have the same meaning as defined for the customer company entity licensed to use the Licensor Software in any such agreement.

3.1 Severity Level Definitions

"Severity 1" is an emergency production situation where the Licensor Software is totally inoperable or fails catastrophically and there is no workaround;

"Severity 2" is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Licensor Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

"Severity 3" is where the Licensor Software is usable, but does not provide a function in the most convenient manner; and

"Severity 4" is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from TIBCO.

3.2 Scope

TIBCO will use commercially reasonable efforts to resolve matters according to the problem Severity ("Maintenance") level determined by TIBCO. All communications will be in English. Customer will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to a Customer authorized contact. During the Maintenance term, Customer authorized contacts as applicable for the Maintenance level selected in Customer's order, and which are registered at TIBCO's support website: <https://support.tibco.com/esupport/>, may notify TIBCO's Technical Assistance Center of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by TIBCO, or TIBCO's their respective authorized resellers or distributors (if applicable); Updates are subject to Customer's license agreement limitations and restrictions. "Updates" means Licensor Software bug fixes, enhancements, and upgrades, if and when made generally available by TIBCO under Maintenance to Customers for a specific Licensor Software product. Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer's right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO's sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. TIBCO will notify Customer in writing in the event that Maintenance is materially affected by TIBCO licensor(s). TIBCO will provide Maintenance for a release version of the Licensor Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Licensor Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

3.3 Limits

Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from TIBCO or any other third party. Unless otherwise stated in an Order Form, each license grant is incremental to all prior license grants and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which TIBCO is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Licensor Software products with non-matching service levels. TIBCO reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.

3.4 Perpetual Term Licenses

The initial Maintenance term shall be for one year commencing on the effective date of the applicable Customer order, unless otherwise stated in the relevant Order Form. In the event Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance will be renewed for successive one (1) year terms and the annual Maintenance fee for the first renewal term shall not increase by more than the percentage rate change in the Consumer Price Index for the 12 month period immediately preceding the anniversary date of Maintenance. Maintenance fees for subsequently acquired Licensor Software will be prorated to expire with the then-current annual Maintenance term.

3.5 Limited Term Licenses

The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable Order Form. During the license term, and in the event the Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance may be renewed for successive one year terms, and the annual Maintenance fee for the first renewal term shall be equal to the annual Maintenance fee for the initial term.

3.6 Reinstatement of Maintenance

Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed.

3.7 Non-Continuous Coverage

In the event Customer elects not to maintain continuous Maintenance, TIBCO may, at its discretion, refuse to provide any Maintenance to Customer until payment for the period of discontinuity is made current.

3.8 Discontinued Support for Prior Release Version

When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, will attempt to provide Customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Licensor Software product.

When a Customer:

- encounters a known defect, which is already corrected in the most current or a supported version of the Licensor Software, the Customer will need to upgrade to the most current or supported version of the Licensor Software to obtain the fix; or
- discovers an unknown defect, engineering will make the fix in the most current version of the Licensor Software and the Customer will need to upgrade to that version to obtain the fix.

Additionally, with typically 12 months prior notice, TIBCO may announce the end of support (i.e. stop accepting SRs) on significantly older versions by publishing a Late Breaking News (LBN) article on the TIBCO Support Web site (<https://support.tibco.com/esupport/>). Even in such a case, access to the knowledge base of the older versions is always available to a Customer currently under Maintenance. A Customer may submit a service request via the TIBCO Support Web to request a product version be included under the TIBCO Extended Support Program.

3.9 Product End-of-Life

Notwithstanding 3.2 above, Customers are provided advance written notice (up to twelve months) when Licensor Software is to be retired. This information is published as "Retirement Notices" under the Late Breaking News (LBN) section of the TIBCO Support Web.

3.10 TIBCO Extended Support Program

TIBCO is pleased to offer customers extended Maintenance on certain Licensor software product versions. The scope and terms of extended Maintenance:

Include

- The ability to submit service requests for eligible product versions.
- TIBCO assistance providing workarounds and existing fixes for issues reported; staging of issues by TIBCO will be on the latest version of eligible product(s).
- Maintenance service level initial response and target resolution times are according to customers' existing Maintenance service level.

Exclude

- Enhancements, service packs, or defect corrections
- Support for new platforms (database versions, operating system versions, TIBCO infrastructure products, etc.)
- Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions
- Partners participating in the TIBCO Partner Network or any other TIBCO Partner program.

Extended Maintenance is subject to eligibility requirements. Please contact your TIBCO Sales Account Executive or the TIBCO Maintenance Renewal team at renewals@tibco.com for more information and to obtain the then current list of product versions currently supported under extended Maintenance.

TIBCO reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which TIBCO Extended Support Program Maintenance fees have already been paid.

3.11 Virtualized Environments Support

Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences in price, features, functionality and quantity, we will provide Maintenance for Licensor Software in any Virtualized Environment if the following criteria are met:

- The operating system running in the Virtualized Environment is supported by TIBCO for Licensor Software version in question, and
- The Virtualized Environment being used is officially certified and approved by the operating system vendor in question, and
- The Virtualized Environment presents a true image of the native operating system.

TIBCO does not make any claims for the performance of Licensor Software running in a Virtualized Environment nor can we make any recommendations for optimal configuration of the Virtualized Environment in question.

Should it become necessary to engage the Virtualized Environment vendor, it will be the responsibility of the Customer to open a service request with their vendor. TIBCO Support will provide reasonable assistance to the Customer or vendor as it relates to the use and understanding of Licensor Software in the case at hand.

4 TIBCO Support Web

It is recommended that the Customer establish and maintain an internal support organization to provide front line support services to their users and that all authorized contacts be trained on the TIBCO software products in classes provided by TIBCO Education, as reasonably required by TIBCO to enable the customer to support licensed TIBCO software products.

Step 1: Identify the assigned contacts within your company. Review your maintenance agreement to see how many contacts are authorized.

Step 2: Register assigned contacts and one management-level individual (for verification and escalation) by sending [an email to support@tibco.com](mailto:support@tibco.com). Be sure to include the name, email address, physical address and phone number of each contact.

All contacts will be registered with our call tracking system and given access to TIBCO Support Web.

Step 3: Have all assigned contacts view the Support Overview Presentation as well as review the "Support Policies" section within TIBCO Support Web.

Additional information about Getting Started can be found at <http://www.tibco.com/services/support/getting-started/default.jsp>.

4.1 Opening a Service Request

There are two ways to report a problem:

- TIBCO Support Web (preferred method). Cases reported online are automatically entered into TIBCO's Call Tracking system and assigned a Service Request (SR) number. TIBCO requires that all Severity 1 cases be followed up with a phone call to our Technical Assistance Center (TAC) to ensure immediate attention to your issue.
- Phone. Each TIBCO customer is assigned a regional Technical Assistance Center (TAC) that they can contact to request support via phone. The support line phone number for each regional TAC in the America's, EMEA and APAC is published on the TIBCO Support Web. A service request will be created in TIBCO's call tracking system and an SR number is provided.

4.2 Processing a Service Request

Once a service request is submitted, the TAC specialist will review, access and assign the appropriate severity level. All severity 3 and 4 calls will be assigned to the appropriate product and workgroup where our technical support engineers will start working on the call on a First in – First out (FIFO) basis. TAC will notify support managers of any SRs that are assigned to Severity 1 or 2, so that they are handled in an escalated manner. The TIBCO Support Engineer will communicate with the customer until the issue is resolved. Depending on the nature of a Service Request, a Service Request can be resolved by a Support Engineer or logged by a Support Engineer as bugs/enhancements with product engineering.

TIBCO support level and responsibilities:

- First level (Technical Assistance Center):

- Review Service Requests reported by Web, Email or phone from a customer authorized contact
- Validate customer maintenance status, product entitlement and check for any special handling required.
- Identify type of request, problem definition, configuration, products, product versions and platforms.
- Determine severity of the problem and execute any escalation procedures necessary.
- Direct problems for resolution to workgroups

- Second level (Product Support):

- Confirm problem and configuration used by the customer
- Evaluate against known problems or issues
- Stage the problem
- Reproduce problems and provide workarounds
- Escalate to engineering where required to develop patches and fixes
- Keep the SR updated at all times within the Call Tracking system
- Keep the customer Authorized Contact updated on the progress

- Third level (Engineering):

- Develop fixes as needed
- Test and verify functionality and performance
- Update the source code control system as needed
- Ensure patches and fixes are incorporated into a future product release

4.3 Escalations

Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:

- No response to a problem reported, within the designated time given by the call response coordinator or technical engineer
- Response times out of severity guidelines
- Customer dissatisfaction with Service Request resolution you've been given

North and South America +1.650.846.5789

EMEA (Europe, Middle East, and Africa) +44(0).870.909.3889

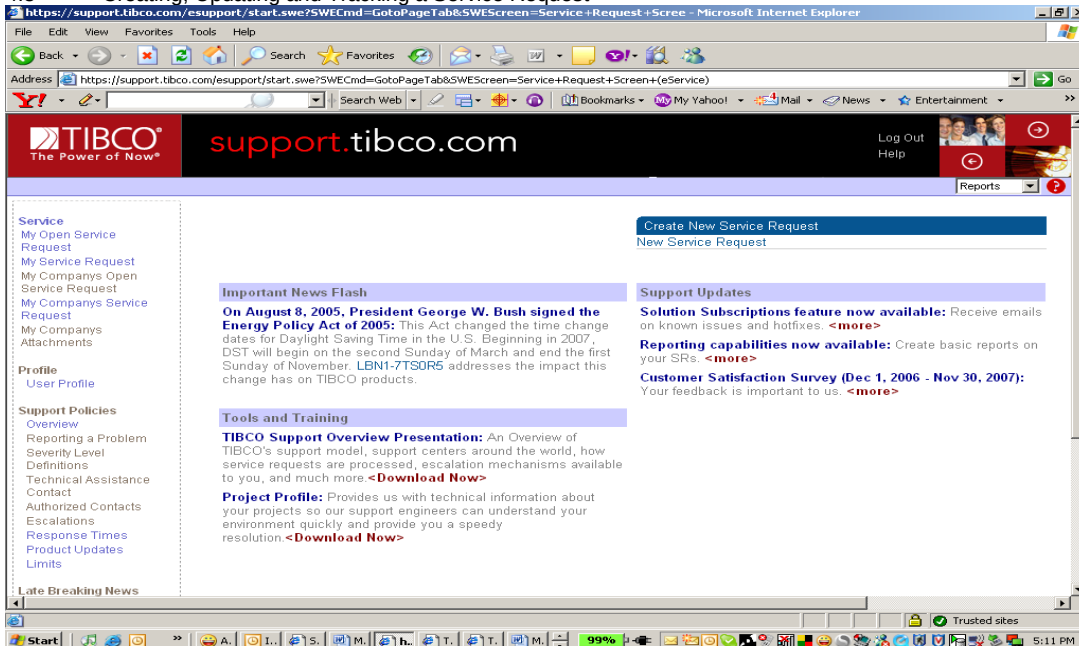
Asia and Australia +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a TIBCO Support Manager. This phone number is to be used if or when a customer is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of TIBCO's management. If voicemail is reached, the customer should leave a message containing the company name, a contact telephone number, and estimated severity level for the issue. The voice mail will trigger an immediate page to a Support Manager, who will contact customer at the number left in the message.

4.4 TIBCO Support Web Login

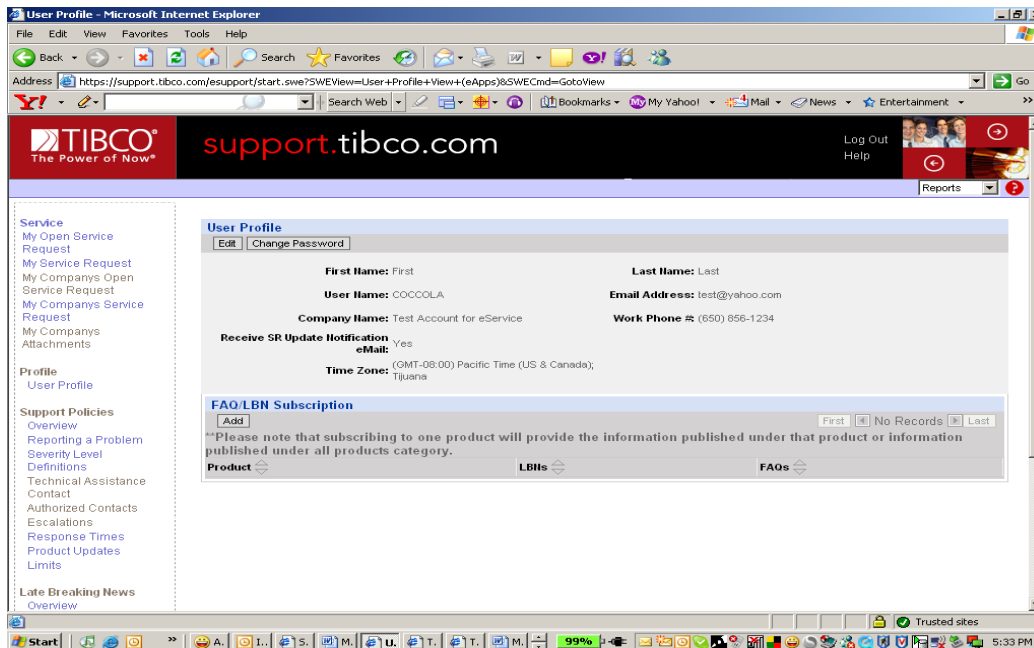


4.5 Creating, Updating and Tracking a Service Request



4.6 User Profile

Authorized contacts are able to change their login password, update their phone numbers, select their time zone and subscribe to Product FAQ's and LBN in this section.



User Profile

First Name: First Last Name: Last
 User Name: COCCOLA Email Address: test@yahoo.com
 Company Name: Test Account for eService Work Phone #: (650) 858-1234
 Receive SR Update Notification: Yes
 Time Zone: (GMT-08:00) Pacific Time (US & Canada), Tijuana

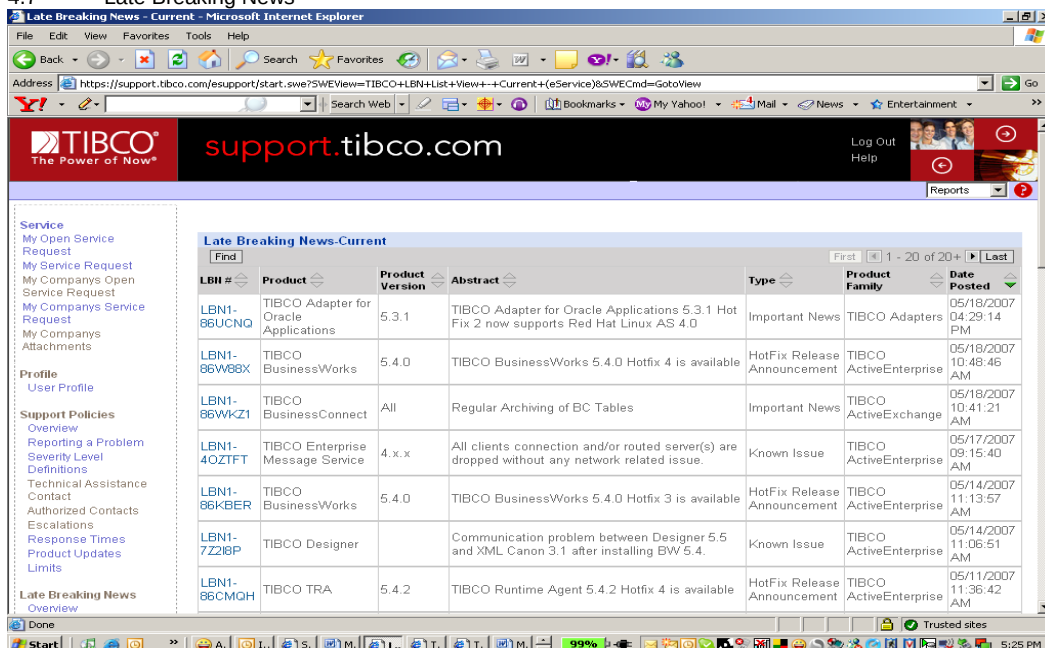
FAQ/LBN Subscription

Add First No Records Last

Please note that subscribing to one product will provide the information published under that product or information published under all products category.

Product	LBNs	FAQs

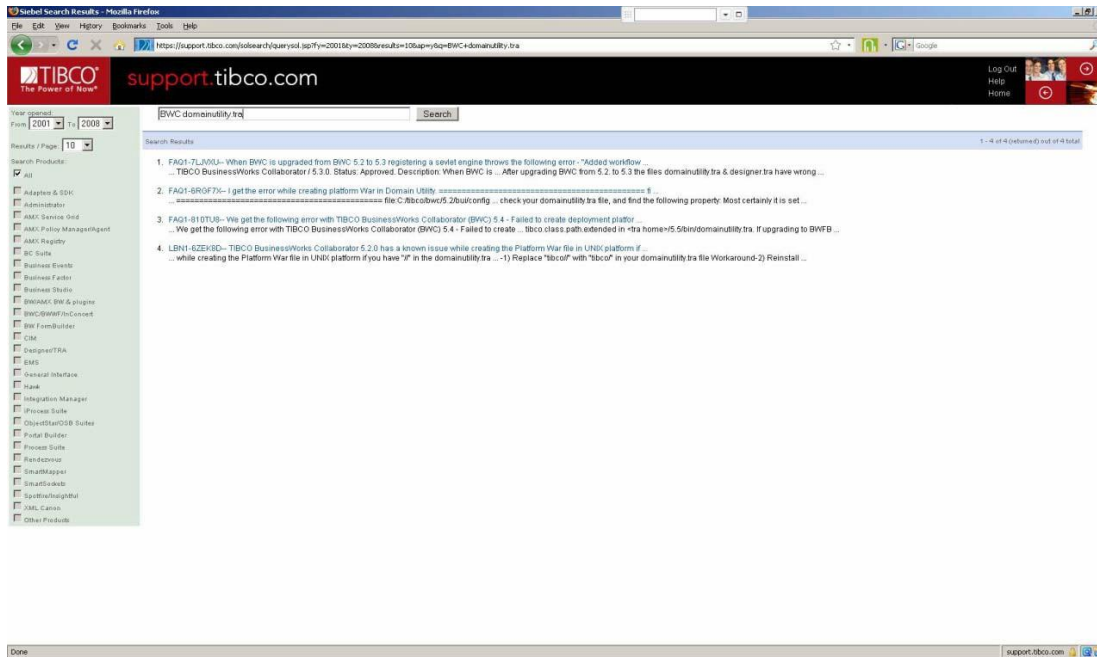
4.7 Late Breaking News



Late Breaking News - Current

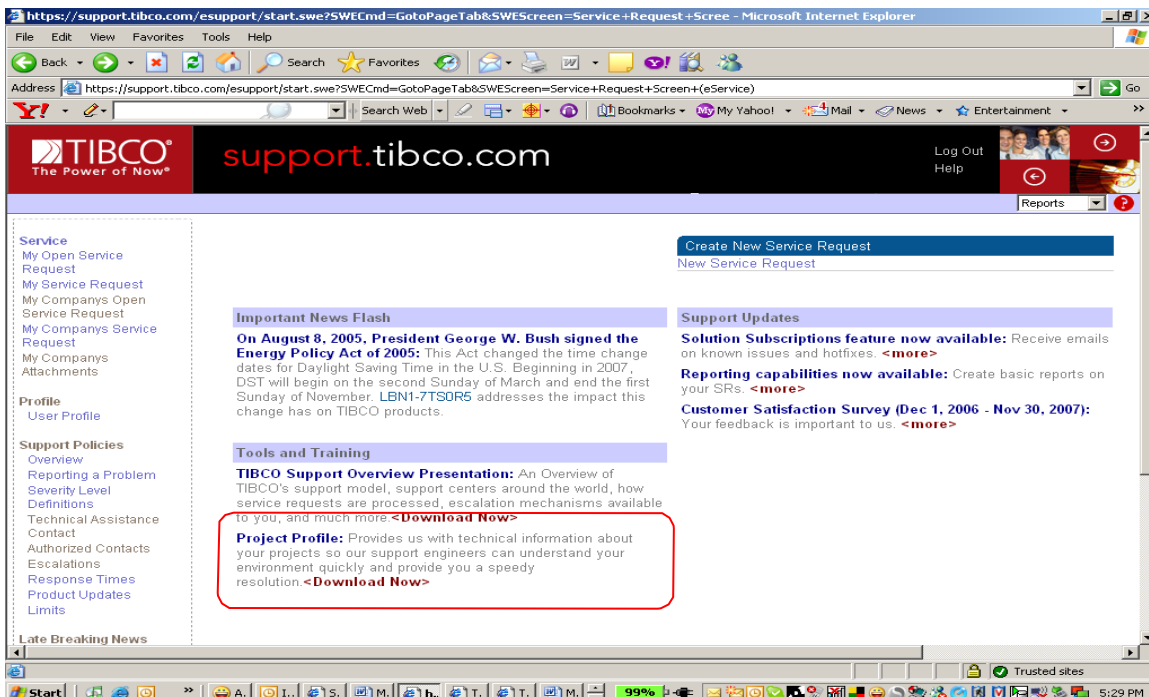
LBN #	Product	Product Version	Abstract	Type	Product Family	Date Posted
LBN1-86UCNQ	TIBCO Adapter for Oracle Applications	5.3.1	TIBCO Adapter for Oracle Applications 5.3.1 Hot Fix 2 now supports Red Hat Linux AS 4.0	Important News	TIBCO Adapters	05/18/2007 04:29:14 PM
LBN1-86V68X	TIBCO BusinessWorks	5.4.0	TIBCO BusinessWorks 5.4.0 Hotfix 4 is available	HotFix Release Announcement	TIBCO ActiveEnterprise	05/18/2007 10:48:46 AM
LBN1-86WKZ1	TIBCO BusinessConnect	All	Regular Archiving of BC Tables	Important News	TIBCO ActiveExchange	05/18/2007 10:41:21 AM
LBN1-40ZTFT	TIBCO Enterprise Message Service	4.x.x	All clients connection and/or routed server(s) are dropped without any network related issue.	Known Issue	TIBCO ActiveEnterprise	05/17/2007 09:15:40 AM
LBN1-86KBER	TIBCO BusinessWorks	5.4.0	TIBCO BusinessWorks 5.4.0 Hotfix 3 is available	HotFix Release Announcement	TIBCO ActiveEnterprise	05/14/2007 11:13:57 AM
LBN1-7ZZ8P	TIBCO Designer		Communication problem between Designer 5.5 and XML Canon 3.1 after installing BW 5.4.	Known Issue	TIBCO ActiveEnterprise	05/14/2007 11:06:51 AM
LBN1-86CMQH	TIBCO TRA	5.4.2	TIBCO Runtime Agent 5.4.2 Hotfix 4 is available	HotFix Release Announcement	TIBCO ActiveEnterprise	05/11/2007 11:36:42 AM

4.8 Product FAQs



4.9 Customer Project Profile

Each customer is encouraged to submit and maintain a detailed project profile that gives details about their TIBCO software implementation.



4.10 Additional Features

- **Solution Subscription feature:** By updating your User Profile, you now have the ability to receive notifications on any FAQ and/or LBN material we publish. This means that you can get the latest information about a known issue or the availability of hot fixes as soon as it is announced on any product of your choice. Please note that when you subscribe to a product, you will receive information published for that product as well as information published under the 'All Products' category.
- **Reporting Capabilities:** Generate basic reports on your service requests and download them in .csv or Excel format. This feature and its help function can be found in the upper right hand corner of the Support Web.
- **Customer Satisfaction Survey:** It is our goal to continuously improve the services we provide and a key part of this process is to hear how we are doing from our customers. The valuable input we receive will help us spotlight areas where we need to focus more

attention. Customer Satisfaction Surveys are being conducted using the telephone by our global TAC team. They will contact customers who have recently completed a service request and will collect feedback on satisfaction measured on a 5-point scale (5-very satisfied; 1- Very Dissatisfied). Results will be shared with our support team as well as be made available on the Support Web for our customers to view.

- Authorized contacts can access the TIBCO Support Overview presentation, which provides useful information about TIBCO's support model, support centers around the world, how service requests are processed, escalation mechanisms available, and much more.

5 TIBCO Spotfire Customer Support

Spotfire and S-Plus customers can submit technical support requests via the TIBCO Support Web portal. The Support Web site allows customers to create, track, and update your product Service Requests (SRs), Enhancement Requests, Knowledge base, Late Breaking News items and more. Customers with accounts on the TIBCO Support Web may login and submit Service Requests today.

6 TIBCO Foresight Customer Support

TIBCO Foresight customers can submit technical support requests via email to fssupport@tibco.com. Customers may also contact our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

7 Product Download Site

The electronic software delivery service found at <http://download.tibco.com/tibco/> provides confirmed internet delivery and tracking of software and documentation packages to authorized customers. Use of this system requires a secure username and password. This service provides authorized users with a customized portal to access their TIBCO product entitlements. Customers can view products they have purchased (excluding products purchased from a TIBCO web store site), as well as products they have obtained for evaluation purposes (excluding products downloaded or obtained for evaluation from another TIBCO web site). Customers with a current maintenance contract will automatically be entitled to download new releases, product updates and service pack releases, during their active maintenance period. Additional information is available on the TIBCO Support Web at "Product Updates" under the "Support Policies" section. Any software downloaded from this site may only be used in accordance with the terms and conditions of your license agreement with TIBCO Software Inc.

8 tibbr® Support

tibbr® Support Customers are entitled to Maintenance Service for tibbr® at the Silver Maintenance Level unless otherwise stated in an Ordering Document, as well as access to the tibbr® Support Program, as described below, irrespective of the service level of Maintenance for any other Licensor Software products which Customer might have licensed and provided that all tibbr® Product Line Licensor Software products licensed by Customer are subject to tibbr® Support.

8.1 tibbr® Support Program

This Program is intended to support Customers through the adoption of tibbr® within their organization. As part of this Program, Customers will be supported in their ongoing usage of tibbr® with responses to questions regarding technical issues, usage best practices and how to best implement the product.

The tibbr® Support Program is provided by TIBCO upon Customer's request, subject to availability of resources and on a reasonable effort basis. TIBCO will make reasonable endeavours to meet Customer's requests for assistance but provides no assurance that this service will be delivered on specific dates. TIBCO reserves the right to modify, reduce or increase the tasks included in the Program. Service Requests can be opened either through the TIBCO Support Web or by phone.

TSFI EULA Appendix D – Equipment Maintenance Program Guide

1. Overview

This Equipment Maintenance Program Guide ("Equipment MPG") sets forth the terms and conditions by which TIBCO shall provide, and its customers shall receive, Maintenance for Equipment.

Maintenance services are optional and are available at the Bronze and Silver levels. Software Maintenance is determined by the level of Equipment Maintenance purchased, i.e. Maintenance levels for Equipment Software must be equal to the Maintenance levels for the corresponding Equipment, e.g.

Silver level Equipment Maintenance will include Silver level Software Maintenance for the Equipment Software.

Maintenance for Equipment Software is subject to the Maintenance Program Guide located at Appendix C ("MPG"). In the event of a conflict between the MPG and this Equipment MPG, where such conflict pertains to Equipment, this Equipment MPG shall prevail.

Solely as used in this Equipment MPG, "Agreement" means this Equipment MPG, the MPG and any agreement currently in effect between Customer and TIBCO related to the Equipment.

2. Equipment Maintenance Service Levels

MAINTENANCE LEVEL	Bronze (includes Updates)	Silver (includes Updates)
Service Hours:	9 a.m. -5 p.m., Monday-Friday ("Business Hours") Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours Severity 3: Next Major Release	Severity 1 & 2: 4 Hours Severity 3: Next Major Release
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Authorized Contacts:	Unlimited	Unlimited

3. Equipment Maintenance Terms and Conditions

3.1. Equipment Maintenance - Scope. This Section 3 applies to Maintenance of Equipment, specifically excluding Maintenance for the TIBCO Messaging Appliance™ ("TMA"), and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below. TMA Maintenance terms are set forth in Section 4 below.

3.2. Equipment/Component Repair or Replacement Protection. During the Maintenance term, for all Equipment Maintenance levels, and subject to Customer's compliance with the Agreement, TIBCO shall, at its sole option, either repair or replace the covered Equipment or component thereof that TIBCO can confirm is causing an error.

3.3. Contacting Support; Troubleshooting. Upon discovering an error, Customer must promptly first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling Equipment replacement or repair, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in Section 6 below.

3.4. On-site Equipment Repair Process.

3.4.1. On-site repair support is available solely for TIBCO LogLogic® Security Event Manager ("SEM") and TIBCO LogLogic® Security Event Viewer ("SEV") Customers in the United States and Europe.

3.4.2. If TIBCO determines that the Equipment or component thereof may be repaired at Customer's location, TIBCO will endeavor to dispatch a TIBCO (or TIBCO-contracted) technician to the Customer's location by the next business day; provided, however, that Customer must immediately notify TIBCO in writing in advance if the Equipment is located in an area with restricted access which may require a technician with special qualifications. In such instance, TIBCO will use commercially reasonable efforts to locate and contract, if necessary and at Customer's expense, a technician with such special qualifications; provided that Customer understands and agrees that any reasonable delay or failure in procuring such technician shall not constitute a breach of the Agreement.

3.5. Equipment Replacement – Processes and Procedures. Except as otherwise provided in Section 3.4 above, TIBCO will take all commercially reasonable steps to replace the Equipment or component thereof, as applicable; provided that Customers follow the return material authorization ("RMA") procedure described in this Section 3.5. In the event that TIBCO recommends replacement of a component, TIBCO will provide Customer with instructions for the removal of the component and the installation of the replacement component.

3.5.1. Customer must obtain an RMA from TIBCO prior to returning any Equipment to TIBCO. Customer may request an RMA by telephone (1-800-957-LOGS) or by email at support@loglogic.com. Customer must provide the following information related to every Equipment or component thereof to be returned:

- Model number, and serial number, eth0 MAC address or Tag ID of the Equipment, and, if returning an Equipment component, a description of such component;
- Sender's name, telephone, email address and fax number;
- Reason for return, i.e. a description of the error; and
- Ship-to address, including contact name, email address and phone number of the individual to receive the TIBCO replacement Equipment.

3.5.2. If the RMA is received, authorized and processed by TIBCO before 2 PM Pacific Standard Time (USA) or 2PM UK (GMT) Time, TIBCO will ship replacement Equipment: (1) on the same business day where the Equipment or component to be replaced does not require customization; and (2) within forty-eight (48) business hours where the replacement Equipment requires customization. Non-customized shipped replacement Equipment or components will be factory-default/off-the-shelf. Any shipped repaired or replaced Equipment or components may be refurbished or include refurbished components.

3.5.3. TIBCO will ship replacement Equipment for next local business day standard delivery to Customer's location free of freight charges. Unless otherwise specified or agreed upon, factory default/off-the-shelf Equipment will be shipped with the latest Software.

3.5.4. TIBCO will provide Customer with a shipping account number or prepaid shipping label to use for purposes of returning defective Equipment or components. While Customer is not obligated to return defective Equipment or components before TIBCO will ship replacements, Customer is nonetheless required to ensure that the returned Equipment is received by, or is in transit to, TIBCO or its designee within ten (10) business days of Customer's receipt of the replacement Equipment.

3.5.5. TIBCO strongly recommends that Customer keep all original packing material received with the Equipment for use in any Equipment return. If Customer no longer has the original packaging, Customer may request that TIBCO send them replacement packaging at Customer's cost. Customer shall also be wholly responsible for any damage or loss of the Equipment in transit; TIBCO recommends that Customer procure sufficient insurance before shipping Equipment to TIBCO.

3.5.6. Customer acknowledges that Customer-returned Equipment shall become the property of TIBCO upon delivery to TIBCO.

3.6. Keep Your Hard Drive Option: For an annual additional fee, Customers may purchase an option to "Keep Your Hard Drive," entitling Customer to retain the defective hard drive(s). Subject to compliance with instructions provided by TIBCO, Customer may extract and retain or destroy the original hard drives from the Equipment. In no instance may Customer transfer, connect or otherwise use any drive(s) from returned Equipment in the replacement Equipment; doing so will result in Customer's breach of the Agreement, and will void TIBCO's warranty obligations.

3.7. Extended Support: Extended support for Equipment is available, subject to Section 3.10 of the MPG (TIBCO Extended Support Program).

4. TMA Maintenance Terms and Conditions

4.1. TMA Maintenance – Scope. This Section 4 applies solely to the TMA, and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below.

4.2. TMA Replacement Protection. During the Maintenance term, and subject to Customer's compliance with the terms and conditions of the Agreement, under Silver Equipment level Maintenance, TIBCO will provide a permanent replacement of the TMA. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available.

4.3. Contacting Support; Troubleshooting. When experiencing a problem, Customer must first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the TMA. Prior to scheduling advance replacement of the TMA, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in this Section 4 and in Section 6 below. Customer will be required to provide a credit card number or purchase order number.

4.4. TMA Replacement – Processes and Procedures. If the problem cannot be resolved remotely, TIBCO will replace the failed TMA provided that Customers follow the procedure described below.

4.4.1. Prior to returning the failed TMA, Customer must:

- a) perform all steps for self-test and trouble-shooting specified in the operating manual for the TMA;
- b) provide to TIBCO, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable).

4.4.2. Promptly following completion of Customer's obligations under Section 4.4.1, TIBCO or its authorized third party will ship the replacement TMA to Customer's location free of freight charges. The replacement TMA will be shipped in a suitable container and include instructions for returning the failed TMA. Packaging instructions and a prepaid shipping label for the return of the failed TMA will be included in replacement TMA shipping container. At TIBCO's discretion, TIBCO or TIBCO's authorized third party provider may elect to collect failed TMA at your location.

4.4.3. The replacement TMA will be a new or a refurbished TMA.

4.4.4. To return the failed TMA, Customer must:

a) unless Customer will deliver the failed TMA to TIBCO in person, package the failed TMA carefully in the original shipping container, or a shipping container that prevents the TMA from being damaged while in transit to TIBCO or TIBCO's authorized third party provider.

b) ship the failed TMA to TIBCO or TIBCO's third party provider (as directed by TIBCO) within three (3) business days of receipt of the replacement TMA and obtain a prepaid insurance receipt to be retained by Customer as proof of shipment to TIBCO.

4.4.5.If TIBCO or TIBCO's third party provider does not receive the failed TMA within fifteen (15) days of Customer's receipt of the replacement TMA, TIBCO reserves the right to institute any available legal action related to the failure to return the TMA.

4.4.6.The returned TMA shall become the property of TIBCO or TIBCO's third party provider upon receipt.

4.5. Support Limitations:

4.5.1.At TIBCO's sole discretion, Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Customer replaceable by TIBCO. TIBCO will determine the appropriate delivery method required.

4.6. The following services are specifically excluded from TMA Maintenance:

- Diagnosis or Maintenance at the Customer site.
- Set-up and installation of the replacement TMA or replacement parts at the Customer site.

5.Maintenance Exclusions

5.1. Third Parties. Customer acknowledges and agrees that TIBCO may subcontract Maintenance services for the Equipment, in TIBCO's sole discretion, to a third-party authorized provider; TIBCO will remain responsible for ensuring that the Equipment Maintenance obligations under this Agreement are fulfilled.

5.2. Equipment Maintenance specifically excludes:

- Recovery of the operating system, other software, parameters and data.
- Troubleshooting for interconnectivity or compatibility problems.
- Services required due to failure of Customer to incorporate any system or software fix, repair, patch, or modification provided to the Customer by TIBCO.
- Services required due to failure of the Customer to take avoidance action previously advised by TIBCO.
- User preventative maintenance.
- Damage caused by failure of Customer to follow manufacturer's recommended maintenance or operating specifications, or caused by Customer's misuse, negligence or abuse.
- Damage caused by environmental causes at Customer's location, such as poor ventilation, improper storage, power failures or surges.
- Damage due events outside of TIBCO's control, including fire, flood, act of god, war or nuclear incident or terrorism.
- Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality.
- Fraud or theft.
- Alteration or modification of the Equipment in any way, not specifically directed in writing by TIBCO; repairs or alterations made by an unauthorized technician or user; damages caused by combination of Software with third party hardware or software.
- Transit or relocation of Equipment by Customer, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.

6.Customer Responsibilities

Customer will be required, upon TIBCO's request, to support resolving any problem reported under Maintenance remotely by:

- Providing all information necessary for TIBCO to deliver timely and professional remote support and/or to enable TIBCO to determine the level of support eligibility.
- Starting self tests and/or other diagnostic tools and programs.
- Performing other reasonable activities to help TIBCO identify or resolve the problem.
- Customer must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.
- Customer is responsible for installing all replacement Equipment (or components thereof) in a timely manner.
- Customer is solely responsible for backing up all copies of its Licensed Software and data.
- Customer shall restore software and data on the Equipment after the repair or replacement.
- Customer is responsible for the installation of any software not provided by TIBCO with the Equipment and insure all software installed on the Equipment is appropriately licensed and compatible with the Equipment.
- Where Customer is not a Government End User, Customer acknowledges that in the event that diagnosis by TIBCO reveals that the error is not caused by the Equipment that TIBCO may charge Customer the then-current GSA Schedule rate for such diagnosis.
- In the event of that the Equipment or TMA is retired, Customer may need to upgrade its Equipment or TMA in order to ensure performance of the applicable Software.

7. Equipment End of Life and End of Sale:

As part of the normal product lifecycle, TIBCO will announce the date of which an Equipment will become End of Life ("EOL") which such announcement will also include a date for the End of Sale ("EOS") of such Equipment. For clarity, this Section 7 applies to EOL of Equipment only, specifically excluding TMA. An EOL means that TIBCO will no longer provide Maintenance for such Equipment. EOS means that such Equipment will not be available for purchase.

TIBCO shall EOL an Equipment three (3) years following the EOS date, at which point all Maintenance services for such Equipment shall terminate.

TIBCO Software Inc.
Terms of Use for United States Federal Government Users

PLEASE READ THE FOLLOWING TERMS OF USE ("TERMS") CAREFULLY.

TIBCO SOFTWARE INC. AND ITS AFFILIATES ("TIBCO" OR "WE") PROVIDE THIS WEBSITE TO YOU, YOUR EMPLOYEES, AGENTS AND CONTRACTORS SUBJECT TO THESE TERMS. . IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT USE THIS WEBSITE.

1. TIBCO Software Inc.: Our Services to You

We are a leading enabler of real-time business and the world's largest independent business integration software company. The Site offers access to products, support and services downloads, including documentation downloads, tutorials, a knowledge repository, information about special events, and user forums. The Site is intended for use by customers, partners and guest users. TIBCO customers generally have access to the entire Site. However, TIBCO's Team TIBCO partners and other alliance partners specifically designated by TIBCO ("Partners") may have access to additional material exclusively for Partners. Guest users have limited access to certain portions of the Site.

2. RESERVED.

3. User Registration and Access

You agree to (i) provide accurate, current and complete information in any registration form(s); (ii) maintain the security of your password and identification; (iii) maintain and promptly update the registration data and any other information you provide, to keep it accurate, current and complete; and (iv) accept all risks of unauthorized access to information and registration data using your password and/or identification. You are responsible for all activities that occur under your account. TIBCO will not be liable for any loss that you may incur as a result of anyone using your password or account, either with or without your knowledge. However, you could be liable for losses incurred by TIBCO or another party due to someone else using your account or password. You agree that you will not misuse or abuse account access and passwords, including, without limitation, giving access to third parties or allowing third parties to gain access to information from the Site through you. Please see our Privacy Statement for more information on the treatment of your information.

4. Restrictions On Use Of The Site And Its Content

The Site is owned and operated by TIBCO. All materials appearing on the Site, including the text, video, files, site design, logos, graphics, icons and images, as well as the selection, assembly and arrangement thereof, are the sole property of TIBCO and its licensors. You may view, download, print and use all or portions of the text and video on the Site solely for your internal use. However, any technical information that you download is also governed by the terms and conditions of your written software license agreement or partnership agreement with TIBCO, whichever is applicable. White papers may be distributed only in connection with the furtherance of TIBCO business in connection with your partnership with TIBCO.

Portions of the Site offer you the opportunity to download certain software ("Available Software") as well as files that are uploaded to the Site by users ("Files"). Any Files and Available Software that you download from the Site are governed by the terms and conditions of your written agreement for downloading such Files or the written software license agreement, whichever is applicable.

Except as may otherwise be provided for in a written agreement with TIBCO or with respect to the Files or Available Software you download from the Site, any other copying, modification, reproduction, performance, display, incorporation into any other Web site or other work, mirroring the Site, redistribution, retransmission or publication of any downloaded material is strictly prohibited without TIBCO's express written consent. You agree not to change or delete any copyright, trademark or other proprietary notices from any documents, files, other content or Available Software. You must give TIBCO prior written notice if you wish to link any other web page, etc. to the Site. Such notice should be sent to tibcommunity@tibco.com. We reserve the right to refuse anyone permission to link to the Site, for any or no reason.

5. Rules of User Conduct

Portions of the Site allow you to post material and/or upload Files. You agree to post, send and receive only messages and material that are proper and related to the Site. By posting information or Files in or otherwise using any communications service, forum, message board, newsgroup, software library or other interactive service that may be available to you on or through the Site, you agree that you will not upload, post or otherwise distribute or facilitate distribution of any content -- including text, Files, communications, software, images, sounds, data or other information (collectively, "Content") -- that:

a. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, embarrassing, disruptive, infringing, obscene, objectionable, fraudulent, invasive of another's privacy (including stalking), tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals) or otherwise violates these Terms, the Privacy Statement, or the legal rights of others;

- b. you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- c. victimizes, harasses, degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- d. infringes on any patent, trademark, trade secret, copyright, right of publicity or other proprietary right of any party;
- e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation or any form of lottery, gambling, survey or illegal or unauthorized schemes;
- f. contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- g. interferes with or disrupts our services or servers or networks connected to the Site;
- h. intentionally or unintentionally violates any applicable local, state, national or international law, including, but not limited to, United States export laws and the export and import laws of other countries, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- i. collects or stores personal data about other users; or
- j. impersonates any person or entity, including any employee or representative of TIBCO or otherwise misrepresents your affiliation with a person or entity.

6. Site Content

TIBCO does not control, screen or endorse communications on the Site and is not responsible for screening or monitoring information or materials posted by users of communications services, forums, chat rooms, message boards, newsgroups, software libraries or other interactive services that may be available on or through the Site. We may or may not elect to screen, monitor or edit Content. We and our agents reserve the right at our sole discretion to review any communication and to take any steps we deem appropriate to restrict, edit or remove any Content that, in our judgment, does not comply with these Terms or is otherwise harmful, objectionable or inaccurate. We are not responsible for any failure or delay in performing such activities. TIBCO does not guarantee the accuracy, reliability or truthfulness of any material posted by users. Any opinions are those of the user who posted them, not TIBCO's.

It is your responsibility to take all steps necessary to protect your systems from viruses, worms, and other destructive code, and to backup your systems.

Any Content, including but not limited to questions, comments, suggestions, ideas, data, materials, information or Files, that you provide to TIBCO or are on the Site shall not be regarded as confidential, and neither TIBCO nor any other user has any obligation of any kind to you in connection therewith. TIBCO is free to use, disclose, distribute, display, reproduce, perform, and/or create derivative works from, and to sublicense others to do so, any Content without limitation. TIBCO shall have the right to use any ideas, concepts, know-how, data or techniques contained in any Content for any purpose whatsoever.

7. Submissions

We welcome your comments and feedback regarding the Site. However, we do not want and cannot accept any ideas, materials or suggestions you, or someone else, consider to be confidential or proprietary. Accordingly, all comments, feedback, ideas, suggestions and other similar submissions disclosed, submitted or offered to TIBCO using the Site or otherwise (collectively, "Submissions") are not confidential and will become and remain our property. We shall be entitled to use, display, publish, reproduce, modify, transmit, sublicense, translate and create derivative works from and distribute these Submissions in any medium and through any method of distribution, transmission or display for any purpose whatsoever, commercial or otherwise, without compensation or any other obligation to the provider of the Submissions.

8. License

All Files that are uploaded to the Site become public information. By uploading Files, you grant to TIBCO and all other users a royalty-free, perpetual, irrevocable, nonexclusive, transferable, worldwide license to use, reproduce, modify, publish, translate, distribute, perform and display such Files alone or as part of other works in any form, media or technology, whether now known or hereafter developed. No compensation will be paid for Files.

9. No Advice or Recommendations

The Site offers information, tools and resources to provide a better understanding of TIBCO's products and services to customers, potential customers, partners and other affiliates. TIBCO has no obligation to respond to any requests for information or assistance. We may or may not, in our discretion, provide information or assist users of the Site or software. We do not provide business advice through the Site or through any services offered on the Site, including but not limited to, any return-on-investment information, white papers, etc.

10. Links and Third Party Content

The Site may contain links to other sites on the Internet that are owned and operated by third party vendors and other third parties. We are providing these links solely as a convenience. The appearance of a link does not imply our endorsement of the link/site, nor are we responsible for the content of any linked site. You access linked sites at your own risk.

Certain content from third party vendors may be made available as part of the Site. This content is believed to be reliable, but we do not endorse or guarantee the accuracy or completeness of this content.

11. Termination of Site; Usage; Disclosure

This site is provided at no charge as a convenience and resource by TIBCO for its customers – commercial and government alike. TIBCO is under no obligation to continue its operation of this site or to maintain particular materials or resources upon it. In the event that TIBCO ceases to operate or maintain this site, such action will not in any way affect the rights of United States Government customers regarding TIBCO licenses or services obtained under contract or any obligations of TIBCO with regard to the same. We may suspend your access to all or part of the Site with notice for any conduct that we believe is in violation of any applicable law or poses a danger of inoperability of the Site. TIBCO reserves the right to disclose any information it deems necessary to satisfy any applicable law, regulation, legal process or governmental request.

12. Disclaimers

The Content and information contained in the Site may contain inaccuracies or typographical errors, and may be changed, updated or removed without notice. We cannot guarantee that the Content or other information provided through the Site will be accurate or up-to-date. We reserve the right without prior notice to discontinue or change the specifications on products and services offered on the Site without obligation. From time to time, we may make suggestions or recommendations about certain products or services. However, we make no guarantee as to your satisfaction with our suggestions or recommendations or that the suggested or recommended products or services will meet your expectations.

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No waiver by either party of any terms of this Agreement, or any breach by the other party of any of the provisions of this Agreement, shall be construed as a waiver of that or any other provision on any other occasion.

13. Limitation of Liability

TIBCO SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR ANY DAMAGES OF ANY KIND RELATING TO THE USE OF, OR INABILITY TO USE, THE SITE, ITS CONTENT, MATERIALS OR LINKS, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, RELIANCE, CONSEQUENTIAL OR PUNITIVE DAMAGES. THIS LIMITATION WILL APPLY EVEN IF TIBCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND EVEN IF ANY WARRANTY OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE TOTAL LIABILITY OF TIBCO WILL BE LIMITED TO THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING OR USING THE SITE. ANY CLAIMS RELATING TO MATERIALS DOWNLOADED PURSUANT TO A SEPARATE LICENSE ARE GOVERNED SOLELY BY THAT LICENSE.

14. Warranties You Make

By posting Files and/or Content to the Site, you warrant and represent that you own or otherwise control all rights in and to such Files or Content, including the copyright, and that you have the rights necessary to grant the licenses and sublicenses described in these Terms. By posting and/or downloading Files and/or Content to or from the Site, or otherwise accessing the Site, you warrant and represent that you are not located in any U.S. embargoed country, under control of, or a national or resident of, any such country or on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List.

15. RESERVED

16. Compliance with Laws

You agree to comply with all applicable laws regarding the transmission of technical data and software exported from the United States and the export and import laws of the country in which you reside. We may, in our sole discretion, report actual or perceived violations of law to law enforcement or other appropriate authorities. If we become aware, through a complaint or otherwise, of any potential or suspected violation of these Terms or the Privacy Statement, we may (but are not obligated to) conduct an investigation to determine the nature and extent of the suspected violation and the appropriate enforcement action, during which investigation we may suspend services to any customer being investigated and/or remove any material from our servers. You agree to cooperate fully with any such investigation. You acknowledge that violations of these Terms or the Privacy Statement could subject you to criminal or civil penalties.

17. Special Admonitions for International Use

The Site can be accessed from many countries, and may contain references to TIBCO products, programs and services that have not been announced in such countries. These references do not imply that TIBCO intends to announce or make such products, programs or services available in any particular country.

18. Applicable Law

The Site is controlled by TIBCO from its offices within the State of California, United States of America. For United States Government customers, the laws applicable to the interpretation of these Terms shall be applicable United States Federal law.

19. Disputes

Disputes between United States Government customers and TIBCO related to these terms shall be brought in a United States Federal court or adjudicative body of competent jurisdiction.

20. Privacy Statement

We consider the privacy of our users to be paramount, and we have developed a privacy policy to protect and inform our users. Our current Privacy Statement available at <http://www.tibco.com/privacy.jsp> is incorporated herein by reference and made part of these Terms.

21. Disclosure

You acknowledge, consent and agree that TIBCO may access, preserve, and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of TIBCO, its customers and the public.

22. Notices

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Pursuant to Section 512(c)(2) of the Copyright Revision Act, notifications of claimed copyright infringement should be sent to TIBCO's Designated Agent. If you believe that your work has been copied and is or has been accessible on the Site in a way that constitutes copyright infringement, you may contact our designated agent as provided below:

Legal name and address of TIBCO:

TIBCO Software Inc.
ATTN: TIBCO Software Federal, Inc.
c/o Office of General Counsel
3303 Hillview Avenue
Palo Alto, CA 94304

Please feel free to contact TIBCO to resolve a complaint regarding any aspect of service relating to the Site by writing to TIBCO at the address below, sending e-mail to tibcommunity@tibco.com or calling (877) 724-8227. Upon your request, you may have these Terms sent to you by e-mail.

23. How to Contact TIBCO: Email: tibcommunity@tibco.com

Phone: (877) 724-8227

U.S. Mail: TIBCO Software Inc.

3303 Hillview Avenue

Palo Alto, CA 94303

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Unitrends, Inc.
200 Wheeler Road
Burlington, MA 01803

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Unitrends, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A- UNITRENDS Unitrends™ Inc. End User License Agreement

1. Software Use

1.1. License Grant Subject to the terms and conditions of this Agreement, Licensor grants to the Ordering Activity a personal, limited, non-exclusive, non-transferable, license to use the Software for the term set forth in the applicable purchase order accepted by Licensor (either perpetual or for the subscription period selected in the ordering process) in object code form only on such computers, servers, or equipment in which such Software is embedded or for which such Software is approved for use by Licensor in the Documentation and on such storage capacity as specified in the Documentation (collectively "Approved Systems") solely for Ordering Activity's own internal information processing

services and computing needs and subject to any license limitations specified by Licensor or its Channel Partners as part of the ordering process. Any use of the Software that is inconsistent with the terms and conditions of this Agreement, including without limitation the transfer of the Software to another computer or a third party shall be in violation of this Agreement. All rights not expressly granted to Ordering Activity are retained by Licensor. Ordering Activity agrees that its use of the Software will comply with all Federal, state and local laws, rules and regulations of the United States and any foreign country in which the Software is used. The license granted herein is subject to the specific terms set out in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Licensor in the Documentation. Ordering Activity shall pay all applicable license fees as set forth in the applicable purchase order for the Software to Licensor or the Channel Partner through which Ordering Activity issued its purchase order for the Software in accordance with the payment terms set forth on the applicable purchase order.

1.2. Third Party Contractors. Notwithstanding anything to the contrary contained herein, Ordering Activity may permit its Third Party Contractors to use the Software on Ordering Activity's behalf solely in connection with providing information processing and computing services to Ordering Activity. Ordering Activity may not use the Software for providing computing services to third parties. "Third Party Contractor" means a third party engaged by Ordering Activity to provide services to Ordering Activity that is not a competitor of Licensor. Ordering Activity shall require its Affiliates and Third Party Contractors to agree to the terms of this Agreement and shall be liable for any breach of this Agreement by its Affiliates or Third Party Contractors.

1.3 License Keys. In order to use the Software, a license key may be required. After Licensor has received a valid purchase order issued by Ordering Activity which specifies the proper fees and identifies the platform and host name of each computer, server or other equipment on which the Software is installed or will be installed, Licensor will issue a license key to Ordering Activity.

1.4 Restrictions.

(i) General. Except as otherwise expressly permitted herein, Ordering Activity shall not and shall not permit any third party to: (a) translate, adapt, reverse engineer, decompile, decrypt, disassemble, or create derivative works based on the Software; (b) copy (except for one archival copy and provided all of Licensor's trademark, copyright, patent and other notices of proprietary rights are reproduced on all copies), modify or create derivative works of the Software; (c) rent, lease, transfer, assign, sublicense or otherwise transfer rights to the Software; (d) transfer, distribute, resell, rent, lease, sublicense or loan the Software to any third party; (e) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement or otherwise use or make available the Software or any part of the Software for the benefit of any third party, or make the Software or any part of the Software publicly available for download or use via an internet website; (f) distribute any software or device incorporating a part of the Software; (g) use the Software except on the Approved Systems on Ordering Activity's own internal computer networks; (h) attempt to circumvent, disable or defeat any Licensor license key encoded into the Software; (i) use the Software in contravention to any applicable laws or government regulations, including without limitation export laws, and shall not remove the Software or, if applicable, the license keys from the country in which such use was originally licensed; (j) disclose to any third party or publish the results of Software performance benchmarks obtained using the Software; (k) remove any proprietary rights, trademark or copyright notices or other notices contained in the Software. If 1.4(i)(a) is prohibited by applicable law, Ordering Activity shall provide Licensor with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide Licensor with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. Ordering Activity shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

(ii) Software Embedded In Approved System. If the Software is delivered as embedded in an Approved System, Ordering Activity agrees not to remove the Software from the Approved System without Licensor's prior written consent.

(iii) Reserved

(iv) Use Where Invoiced. Ordering Activity's use of the Software under a paid license is limited to the country where Ordering Activity has been invoiced for the Software under the applicable purchase order.

(v) Prior Versions. If the Software is a version that Ordering Activity has converted or exchanged from a valid licensed prior version (i.e., an Upgrade), Ordering Activity agrees that by using the Upgrade, Ordering Activity will no longer use the prior version. Licensor reserves the right to require the certification of the destruction of such previous version of the Software.

1.5 Third Party Software. The Software may include certain third party open source components that are distributed under their own licensing terms. For more details, see the User Guide document in the Documentation available at the Licensor web site (www.unitrends.com) or accompanying the Software. All terms herein are offered by Licensor and not by the rightsholders of such components, and are without prejudice to the terms thereof. Ordering Activity may obtain the location of a copy of the source code of these components by contacting Licensor.

1.6 Continual Development. This Agreement governs any updates, upgrades, new versions, bug fixes, corrections, improvements, revisions or enhancements to the Software which Licensor may furnish to Ordering Activity pursuant to support services or otherwise (collectively, "Upgrades") and any additional copies of the Software licensed or provided to Ordering Activity for which Ordering Activity has purchased and, if applicable, holds the corresponding license keys, all of which are deemed included in the definition of "Software." Ordering Activity acknowledges that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. Ordering Activity further acknowledges and agrees that Licensor has no obligation to provide any Upgrades or additional copies of the Software under this Agreement. If any Upgrades or additional copies are provided (i) Ordering Activity does not have a license or right to use any such Upgrades or additional copies unless Ordering Activity, at the time of acquiring such Upgrade or copy already hold a valid license and corresponding license key, if applicable, to the original Software and (ii) use of the Upgrades is limited to Approved Systems for which the original Software was purchased.

1.7 Support Services. Licensor will not provide, and Ordering Activity is not entitled to, any support services under this Agreement. Ordering Activity may procure support services separately and such support services will be subject to the terms and conditions of the underlying GSA Schedule Contract, Schedule pricelist, and the applicable purchase order. This Agreement does not give Ordering Activity any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by Licensor at any time in the future. Any of the foregoing updates, upgrades, extensions or enhancements may be available at Licensor's discretion and Ordering Activity will be notified in the event of their availability.

1.8 APIs. Licensor may provide to Ordering Activity Application Programming Interface ("API's") for Ordering Activity's use solely for the purpose of creating software that communicates with the Software ("Interfaces"). Ordering Activity hereby acknowledge and agree that Ordering Activity will not (1) use the APIs to create, design or develop anything other than Interfaces; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that Ordering Activity may modify and create derivative works of, and distribute any code provided in the APIs that is designated by Licensor in the API's documentation as "distributable code" solely as part of Interfaces; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of the Software or this Agreement; or (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

1.9 Additional Terms Applicable to Boomerang. If Ordering Activity has licensed Licensor's Boomerang Software the following terms apply and shall supersede any conflicting terms in Section 1.1.

1.9.1 License. Licensor grants to the Ordering Activity a limited, non-exclusive, non-transferable license during the subscription period selected by Ordering Activity as part of the ordering process (the "Subscription Period") to use the Boomerang Software for the "Permitted Purpose" on the terms and conditions of this Agreement and limited to the number of virtual machines selected by Ordering Activity in the ordering process ("VM Quota Entitlement"). Ordering Activity acknowledges and agrees that the Boomerang Software is provided as a virtual OVA appliance only. The license granted in this Agreement is solely for the following "Permitted Purpose": to replicate, cloudburst, and migrate virtual machines ("VMs") between Ordering Activity's VMware environment and AWS cloud, and perform services for Ordering Activity's internal business purposes only. If Ordering Activity has issued a purchase order for the "Migration Only" offering, Ordering Activity acknowledges and agrees that the Subscription Period is sixty (60) days and Boomerang may be used on only one virtual machine. Ordering Activity may not use the Boomerang Software except on Ordering Activity's own VMware environment and Amazon Web Services ("AWS") cloud.

1.9.2 Reserved.

2. Reserved.

3. Reserved.

4. Ownership

4.1 Software. The Software and APIs are licensed and not sold. Ordering Activity acknowledges and agrees that the Software and the APIs are the sole property of Licensor and its suppliers, and has been developed at great expense; therefore, Ordering Activity agrees to protect the Software and APIs from unauthorized disclosure to third parties. As between Licensor and Ordering Activity, all right, title and interest in and to the Software and the APIs, and all enhancements, updates, modifications, new versions, and derivative works thereof, and all intellectual property rights therein and thereto, are solely owned by Licensor and Licensor reserves all rights not expressly granted hereunder.

4.2 Reserved.

4.3 Feedback. Ordering Activity and its users may, from time to time, make known to Licensor suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to Licensor with respect to the Software (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Licensor shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Ordering Activity or any other person or entity. To assist Licensor in its efforts to enhance the features available in the Software in order to improve Ordering Activity's experience in using the Software, Ordering Activity agrees that Licensor may collect log and usage information from the Software, which may be used by Licensor for its business purposes. Licensor may use any technical information Ordering Activity provides to Licensor for any Licensor business purposes without restriction, including for product support and development. Licensor will not use technical information in a form that personally identifies Ordering Activity.

4.4 Reserved.

5. Reserved.

6. Limited Warranty; Disclaimer

6.1. Reserved.

6.2 Limited Warranty. Subject to the provisions of this Section 6, Licensor warrants only that the Software will conform in all material respects to its published Documentation for a period of sixty (60) days from the earlier of (i) the date Ordering Activity first downloads and is able to use the Software and

(ii) the date Licensor or its Channel Partner provides Ordering Activity with the associated license key(s). Ordering Activity's sole and exclusive remedy for any breach of this warranty is for Licensor or its designated third party service provider to, at Licensor's option and in its sole discretion, to either (i) repair or replace, without charge, any Software which is not in conformity with the foregoing warranty or (ii) to terminate this Agreement and refund the license fees paid by Ordering Activity for the Software instead of repairing or replacing the Software. This limited warranty extends only to the original Ordering Activity. This warranty is subject to the following conditions: (i) the Software is installed by Licensor or its authorized representatives or installed in accordance with all of Licensor's installation instructions by personnel trained by Licensor; and (ii) Ordering Activity notifies Licensor within the sixty (60) day warranty period of the breach of warranty. This warranty does not cover (x) any defect or deficiency which is not reproducible or which results from: (1) any alteration, repair or maintenance of the Software by

anyone other than Licensor or its authorized contractors; (2) failing to follow in all material respects Licensor's written recommendations or instructions; (3) use the Software on other than the Approved Systems or using or combining the Software with products or services of others, other than under Licensor's direction; (4) any of Ordering Activity's designs, specifications or instructions; or (5) any abnormal physical or electrical stress, or any accident, misuse, abuse or other cause external to the Software as furnished by Licensor and beyond Licensor's reasonable control; (y) any software support not strictly necessary to correct warranty defects as provided herein and (z) any Approved Systems, third party software, supplies or accessories included with the Software. Such Approved Systems and other third party products are provided with the owner's or manufacturer's warranties, if any, which Licensor is permitted to pass on to Ordering Activity. OTHERWISE, SUCH THIRD PARTY PRODUCTS ARE PROVIDED TO ORDERING ACTIVITY "AS IS".

6.3 DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE, THE TRIAL VERSION OR ANY FREE SOFTWARE WILL BE ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT LICENSOR WILL BE ABLE TO CORRECT ALL DEFECTS. THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. LICENSOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. Ordering Activity assumes the risk of any and all liability, damage or loss from use, or inability to use the Software, the Trial Version, and any Free Software. If applicable law requires any warranties other than those set forth in this Section 6, all such warranties are limited in duration to sixty (60) days from the earlier of the date the Software is first made available for download or is delivered.

7. Reserved.

8. Government End Users: This section applies to all acquisitions of the Software by or for the United States Federal Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return the Software, unused, to Licensor at the address set forth above.

Varonis Systems, Inc.
1250 Broadway, 29th Floor
New York, NY 10001

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Varonis Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

VARONIS SYSTEMS, INC.

VARONIS SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

License Agreement

THE TERMS OF THIS LICENSE SUPERSEDE IN THEIR ENTIRETY ANY CONFLICTING TERMS OF ANY LICENSE AGREEMENT WHICH ACCOMPANIES THE SOFTWARE, AS APPLICABLE, BASED ON THE SOFTWARE KEY THE GSA CUSTOMER HAS BEEN ASSIGNED (THE "SOFTWARE").

1. **Grant of License.** Varonis Systems, Inc. ("Licensor") grants the GSA Customer a limited, , non-exclusive, nontransferable, non-sublicensable license to (i) use the Software as provided herein, during the Evaluation Period (as defined below), solely for the trial and evaluation of the Software (a "Temporary License"), and/or (ii) subject to the full payment of the applicable license fee, to use the Software, in executable form only, internally (the "Permanent License") solely during the term set forth in Section 5 below. The GSA Customer may not make any commercial use of the Software, nor grant any third party any right to use the Software, whether or not for any consideration. This License Agreement allows the GSA Customer to run and use the Software on the GSA Customer's internal network, subject to the number of users (i) limited by the software key provided to the GSA Customer by the Licensor, if a Temporary License is granted to the GSA Customer, or (ii) indicated in the GSA Customer Purchase Order pursuant to which a Permanent License is granted to the GSA Customer. For the purpose of this Agreement, with respect to each Software Product a "user" shall include any user that has access or may potentially have access (whether authorized or unauthorized) during the term of the Permanent License to any of the data resources monitored by such Software Product.
2. **Other Rights and Limitations.** The GSA Customer may not, and may not permit or aid others to, translate, reverse engineer, decompile, disassemble, update, modify, reproduce, duplicate, copy, distribute, place the Software onto a server so that it is accessible by third parties via a public network or otherwise disseminate all or any part of the Software, or extract source code from the object code of the Software. The GSA Customer may not publish or make available to the public, without Licensor's prior written approval, its impressions, evaluations, notes or recommendations from the use of the Temporary License. The Software is licensed as a single product. The GSA Customer may not separate its component parts for use on more than one computer or for any other purpose. The GSA Customer may not assign, sublicense, transfer, pledge, lease, rent, or share the GSA Customer's rights under this Agreement. Any data processed, shared, transferred or otherwise used by the GSA Customer, including any of its users, is the GSA Customer's sole responsibility. The GSA Customer must comply with applicable federal data protection laws and regulations. The GSA Customer must verify that no unauthorized users have access to its data. THE GSA CUSTOMER SOLELY, IS RESPONSIBLE TO BACK UP ITS DATA. Under no circumstances will Licensor be liable for any inaccuracy, loss of or damages to the GSA Customer's data used by it including any of its users by means of the Software.
3. **Proprietary Rights; Confidentiality.** The GSA Customer acknowledges and agrees that the Software is a proprietary product of Licensor, protected under copyright laws and international treaties. The GSA Customer further acknowledges and agrees that all right, title and interest in and to the Software, including associated intellectual property rights, are and shall remain with Licensor. All intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.) evidenced by or embodied in and/or attached/connected/related to the Software, including any revisions, corrections, modifications, enhancements, updates and/or upgrades thereof (to the extent provided by Licensor) are and shall be owned solely by Licensor. This Agreement does not convey to the GSA Customer any interest in or to the Software, except for a limited right of use as set forth herein, terminable in accordance with the FAR, the GSA Schedule Contract and/or any applicable GSA Customer Purchase Orders. The GSA Customer will maintain all copies of the Software and all related documentation in confidence, and in a manner that the Software and all related documentation are not publicly accessible, and that only those that need access to Software shall be able to access it. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.
4. **License Fees.** In consideration of the Permanent License, the GSA Customer shall pay the applicable license fees.
5. **Term and Termination.** The Temporary License shall be effective upon delivery of the Software, and shall continue until the lapse of thirty (30) days from the delivery day (or such longer period as approved in writing by the Licensor), unless terminated earlier as set forth in the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders (the "Evaluation Period"). The Permanent License shall be perpetual, unless terminated by Licensor in accordance with the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders. When the end user is an instrumentality of the US Government, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract disputes clause (Contract Disputes Act). During any dispute under the disputes clause, Varonis shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
6. **Limited Warranty.** With respect to the Temporary License, no warranties are provided by the Licensor in connection with the Software. With respect to the Permanent License, , Licensor warrants, for the GSA Customer's benefit only, that the media on which the Software is provided will be free from defects in material and workmanship under normal use for a period of twelve (12) months from the date on which a Permanent License was granted to the GSA Customer. Licensor does not warrant that the Software shall be error free or that it shall meet the GSA Customer's requirements. This limited warranty is void if failure of the Software has resulted from accident, abuse, unauthorized use or misapplication. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE SOFTWARE MEDIA AND THE SOFTWARE ARE LICENSED "AS IS", AND LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT.
7. **Maintenance and Support.** Following the Evaluation Period, and in connection with Software granted a Permanent License, the GSA Customer may purchase maintenance and support services pursuant to the execution of a new GSA Customer Purchase Order. The use and installation of any updates, upgrades, patches or other software the GSA Customer may receive or purchase from Licensor or its resellers in

connection with the GSA Customer's use of the Software, shall also be subject to and governed by the terms of this Agreement and the terms of Licensor's Support Principles attached hereto as Exhibit A.

8. **Limitation of Liability.** Notwithstanding anything herein to the contrary, Licensor's cumulative liability to the GSA Customer or any third party for any loss, cost or damage resulting from any claims, demands, or actions arising out of or relating to this License Agreement, the Temporary License and/or the Permanent License shall not exceed the license fees actually paid to Licensor hereunder, if any. In no event shall Licensor be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Licensor has been advised of the possibility of such damages.

9. **Qualifications and Limitations Basis of Bargain.** The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of this License Agreement and the license granted hereunder, and the GSA Customer accepts and confirms that Licensor would not be able to provide the Software on an economic basis without such limitations. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Varonis' negligence; (2) for fraud; or (3) for express remedies under law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

10. **U.S.-Related Special Provisions.** The GSA Customer agrees that the Software is not being or will not be shipped, transferred or re-exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations thereunder, nor will it be used for any purposes prohibited by such Act. If any part of the Software is acquired by or on behalf of a unit or agency of the U.S. Government, the Government agrees that the Software and all related documentation are "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to the Software and the related documentation are limited by the terms of this Agreement, pursuant to FAR 12.212(a), FAR 52.227-14 "Rights in Data" (Dec. 2007) and/or DFARS 252.227. 7015 "Technical Data/Commercial Items" (Jun. 2013), as applicable.

11. **Governing Law and Jurisdiction; Litigation Costs.** This Agreement shall be construed and governed in accordance with the laws of the United States of America without reference to conflict of laws, and dispute resolution shall take place in a forum, and within the time period, prescribed by applicable federal law. No equitable or injunctive relief, and no shifting of legal fees or costs, may be sought against the GSA Customer except as, and then only to the extent, specifically authorized by applicable federal statute.

12. **Auto-updates & Environment Settings survey.** The following functionality shall automatically be available to the GSA Customer with the Software: (i) if the GSA Customer purchases software subscription services, and subject to Government Information Security Requirements, including but not limited to those imposed by the Federal Information Security Management Act (FISMA), Licensor will regularly download and install software fixes and improvements to the installed DatAdvantage® environment. This includes only database scripts and does not compromise the data collected at the GSA Customer's environment. Use of the software fixes and improvements shall be subject to the terms of this Agreement; and (ii) if the GSA Customer purchases support services, subject to Government information security requirements, Licensor will monitor and collect general information about the GSA Customer's installed Software environment. This includes general information (the number of probes, shadows, file servers, folders, users and permissions that are monitored), as well as health status (database sizes, jobs and status of executables). This information can be used by Licensor's support engineers to improve the service if a problem arises, or to contact the customer proactively to prevent problems. Note that the GSA Customer may choose not to activate these functions by manually selecting "I Refuse" during the installation process.

13. **Miscellaneous.** Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders represents the entire agreement concerning the program between the GSA Customer and Licensor and it supersedes any prior proposal, representation, or understanding between the parties. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order. The GSA Customer may not assign this Agreement to any third party without the prior written consent of Licensor. Assignment by Varonis is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

Agreed and Accepted:

Varonis Systems, Inc.
By:
Title:
Date:

The GSA Customer
By:
Title:
Date:

Exhibit A

Varonis Support Principles

1. **Support Services**
 - 1.1. **Support Services.** Throughout the Support Services term, Varonis will make available to the GSA Customer the following Support Services in respect of the Software (for which the Customer duly purchased a license from Varonis) (collectively "Support Services"):
 - 1.1.1. Software Subscription under Section 2 below;
 - 1.1.2. Error verification and classification under Section 3 below;
 - 1.1.3. Correction of Errors under Section 5 below;
 - 1.1.4. Consultation and advice per telephone and email under Section 6 below;

1.2. Supported Versions. Varonis will provide Support Services under this Agreement only for the most current generally available Version of the Software (the "Most Current Version") and the Version immediately preceding the Most Current Version of the Software (the "Previous Version"). Notwithstanding the aforesaid, for a period of three (3) months as of the release of the Most Current Version of the Software, Varonis will provide support services to the Version of the Software which is immediately preceding the Most Current Version of the Software, in such level determined by Varonis at its sole discretion.

"Version" shall mean a subsequent release of a Software or associated Documentation (the user documentation made generally available by Varonis to customers in connection with the Software) denoted by a change in the Software's release number. "Versions" do not include new functionality, features or modules offered by Varonis as separate or additional products or components or add-ons by Varonis.

1.3. Supported Users. Varonis will provide Support Services under this Agreement with respect to the number of users for which the GSA Customer duly purchased the Support Services. Upon any renewal of the Support Services, the GSA Customer shall be required to renew the Support Services for the higher of (i) the initial number of users indicated in the purchase order pursuant to which the Software was purchased or (ii) the number of users indicated in Varonis' records, if such number is higher than the number in subsection (i), following an increase in the number of users under the license of the Software pursuant to the purchase of additional license(s) by the GSA Customer (the "Registered Number of Users"). In the event that the GSA Customer renews the Support Services for a number of users which is less than the Registered Number of Users (the "New Number of Users"), Varonis shall be entitled, at any time, to run an audit check (including through running a script) in order to verify the actual number of users applicable to the Software. In the event that any such audit reveals that the actual number of users applicable to the Software is higher than the New Number of Users, Varonis will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

2. Software Subscription.

2.1. Provision of Updates. Varonis shall make available to the GSA Customer, Updates of the Software, if and when Varonis makes such Updates generally available to its other customers then covered by the Software Subscription.

Updates shall mean new Versions, updates, modifications, Work Arounds (a technically reasonably feasible change in the operating procedure of the Software whereby the adverse effects of the Error on the normal operation of the Software are reasonably minimized), upgrades, patches, error-corrections, releases, hotfixes, service packs, feature packs, which are designed and released by Varonis to optimize and/or repair the operation of the Software or the Documentation, if and when generally made generally available by Varonis to its customers. Updates shall not include any new functionality, features or modules offered by Varonis as separate or additional products, components or add-ons ("Additional Products").

2.2. Ability to Purchase Additional Products. Varonis shall make available to the GSA Customer, pursuant to the execution of a new GSA Customer Purchase Order, any Additional Products if and when Varonis generally offers such Additional Products to its other customers.

2.3. Notifications. Varonis shall not be responsible to provide a notice on any Updates or Additional Products available.

3. Error Verification and Classification

3.1. Reporting of Error(s): An Error by Customer shall be reported in writing to Varonis by electronic mail. Each Error Report ("ER") shall state one Error and shall contain the following information:

- A suggested Error Severity Level among one of the classes set out below;
- A description of the command(s) and procedures that reveal the Error;
- A description of the hardware and operating environment;
- Specification of Version of the Software in question;
- A short description of the Error;
- Examples of input;
- The resulting output;
- The expected output;
- Any special circumstances surrounding the discovery of the Error.

3.2. Classification and Verification: For each ER received, Varonis shall:

3.2.1. Confirm receipt of the ER by electronic mail within no later than 30 minutes.

3.2.2. Analyze the ER, verify the existence of the Error(s) and classify the Error, at its sole and exclusive discretion, in one of the Error Severity Levels set forth below, if any:

Severity 1	Severity 2	Severity 3	Severity 4
A down situation where the Software is non-operational and there is no known work-around.			

With errors of this severity level, the Software may:

- Repeatedly fail catastrophically;
 - Require repeated reboots of the system;
 - Impact any system connected to or monitored by the Software.
- A major function of the Software is unusable and no work-around is available, but the Software still supports some production functionality.

With Errors of this severity level, the Software may:

- Be usable, but incomplete;
 - Fail catastrophically;
 - Require reboot of the system;
 - Suffer severe degraded performance (throughput/ response). The Software is functional, but provides incorrect results or is not operating in accordance with the Specifications. Also includes Errors with a major function of the software for which there is a known work-around.
- With Errors of this severity level, the product may:
- Have major errors in results returned;
 - Require use of a Work Around to address issue. All other problems with the Software other than those falling within the categories above.
- With errors of this severity level, the Software may:
- Have minor errors in results returned;
 - Operate in a manner inconsistent with technical Specifications.

"Error" shall mean a reproducible failure in the Software resulting in one of the Error Severity Levels above, causing the Software not to operate in accordance with the Specifications (the published functionality and performance specifications for the Software appearing in the Documentation). Notwithstanding the foregoing, "Error" shall not include any failure caused: (i) by the use or operation of the Software with any other hardware, software or programming languages or in an environment other than that intended or recommended by Varonis, (ii) by any bug, defect, error or malfunction in the Equipment or any hardware or software used with the Software or any other failure of the Equipment, such hardware or software to conform to their published specifications, (iii) due to modifications, alterations and repairs to the Software not made by Varonis or on its behalf, or (iv) due to misuse, accident or improper installation, support or maintenance

4. Technical Support Response Time

Severity Level	Response Time	Additional Info
Severity 1	4 hours during Varonis business hours	For additional info see section 5.1.1
Severity 2	6 hours during Varonis business hours	For additional info see section 5.1.2
Severity 3	Next business day during Varonis business hours	For additional info see section 5.1.3
Severity 4	Next business day during Varonis business hours	For additional info see section 5.1.4

5. Error Correction.

5.1. Method of Correction. Following receipt of Customer's "ER", Varonis and Customer will first attempt to resolve the problem over the phone or via email or other electronic means. If such remote attempts are unsuccessful, Varonis shall use commercially reasonable efforts to Correct Errors as follows:

5.1.1. For Errors classified by Varonis as Severity 1 Level Errors, Varonis shall immediately commence commercially reasonable efforts to create a Work Around within 7 days, and a subsequent final solution as soon as possible. Varonis shall constantly keep Customer informed of the progress of the Error Correction work.

5.1.2. For Errors classified by Varonis as Severity 2 Level Errors, Varonis shall immediately commence commercially reasonable efforts to create a Work Around within fourteen (14) days, and a subsequent final solution which as soon as possible. Varonis shall until completion of the Work Around, inform Customer of the progress of the Error Correction work at least once every three days.

5.1.3. For Errors classified by Varonis as Severity 3 Level Errors, Varonis shall commence commercially reasonable efforts to create a Work Around within fourteen (14) days, and a subsequent final solution at a reasonable time thereafter. Varonis shall until completion of the temporary solution, inform Customer of the progress of the Error Correction work at least once a week.

5.1.4. Correction of Errors classified by Varonis as Severity 4 Level Errors, if any, shall be repaired within a reasonable time taking into account Varonis' then current workload and planning.

5.2. Location. Any Error Correction shall be carried out by Varonis from Varonis' offices only and in no way will Varonis' be obligated to provide any on-site support or visit or be present in Customer's premises or in any other location. "Error Correction(s)" shall mean any modification, repair or replacement of the Software to remedy an adverse effect of such Error on the operation of the Software

6. Provision of Telephone and Email Support. Varonis shall use commercially reasonable efforts, to supply during 9AM through 5PM (EST ("Business Hours") on Business Days (Monday through Friday, not including federal holidays), consultation and advice to Customer, directly over the telephone or by Email. Answers will be given to questions regarding the use of the Software and its installation, configuration and Documentation. Furthermore, general advice regarding submitted ER's shall be given.

7. Customer Obligations

7.1. Cooperation. Customer will cooperate with Varonis regarding any Support Services, including without limitation by providing as much detail as available about reported Errors, and taking all such reasonable measures requested by Varonis in order to detect and provide further information with respect to each Error. Customer shall ensure the readiness of its Equipment (hardware situated at the Premises on which the Software is installed and operated), computerized systems, environment and personnel to the operation of the Software, and shall ensure the appropriate conditions required to enable Varonis to comply with its undertakings hereunder, including without limitation: (i) to enable Varonis to remotely access the Software, subject to the GSA Customer's security requirements; (ii) ensure the availability of Customer's personnel required for the operation of the Software; (iii) comply with Varonis' reasonable administrative requirements; and (iv) provide Varonis or its representatives, subject to the GSA Customer's security requirements, remote control access to the server where the Software is installed.

7.2. Access. If requested by Varonis, subject to the GSA Customer's security requirements, the GSA Customer shall grant Varonis such access to the information, to the premises, and to the Equipment as may be necessary or appropriate for Varonis to perform its Support Services. Varonis shall not responsible to any failure to provide Support Services due to GSA Customer's refusal to grant Varonis access reasonably required by Varonis to provide the Support Services.

7.3. Customer Contacts. Customer shall ensure that its contacts authorized to receive the Support Services are fully knowledgeable of the Software and of the underlying technologies and are capable of receiving remote instructions from Varonis and performing activities reasonably required by a computerized system operator.

7.4. Installation of Updates. Customer shall install any and all Updates of the Software within a reasonable time following the date in which they become available.

8. Warranty; Disclaimer; Limitation of Liability.

8.1. VARONIS UNDERTAKES TO PROVIDE THE SUPPORT SERVICES IN A TIMELY AND PROFESSIONAL MANNER. EXCEPT FOR THE ABOVE UNDERTAKING, VARONIS PROVIDES NO WARRANTY, EXPRESS OR OTHERWISE, WITH RESPECT TO THE SUPPORT SERVICES, AND VARONIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8.2. VARONIS' LIABILITY HEREUNDER FOR ANY DAMAGES WHICH CUSTOMER MAY SUFFER SHALL IN NO EVENT EXCEED THE AMOUNT OF THE MOST RECENT ANNUAL SUPPORT FEE PAID BY CUSTOMER TO VARONIS. IN NO EVENT WILL VARONIS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF VARONIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY VARONIS' NEGLIGENCE;

(2) FOR FRAUD; (3) FOR EXPRESS REMEDIES UNDER LAW OR THE CONTRACT; OR (4) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. Contacting Varonis Technical Support

Two primary customer contacts may be designated for contacting Varonis technical support. All issues must be reported through these designated contacts.

9.1. Email

Customers may submit support issues via email to support@varonis.com any time. Email is only monitored during Varonis Business Hours as defined above.

Guidelines for interacting with the email generated from Varonis ticketing and tracking system:

9.1.1. Customer should choose appropriate subject lines to describe its question or issue.

9.1.2. Customer should send in separate email, each individual question or issue it may have, to allow for tracking separately.

9.1.3. If Customer copies additional individuals on the *first* email message to Varonis, those individuals will be added to the ticket in a "cc" list, and will receive emails from the tracking system each time the ticket is updated. If Customer would like to add additional individuals once the ticket has been opened, Customer should reply to the auto-generated email and ask Varonis to add such individuals.

9.1.4. Customer should be aware that Varonis cannot accept any file attachments that are executables, scripts or DLLs. Customer should send Varonis images by inserting them into a Word document. If Customer needs to send Varonis any of the above file types, please contact Varonis technical support to coordinate transfer of the data.

9.1.5. The maximum file size for attachments is 5 MB. If Customer needs to send Varonis larger files, please compress them into several archives and send each one separately or contact Varonis support to coordinate the data transfer.

9.1.6. All email will be converted to text. Customer should not rely on color/fonts to call Varonis' attention to answers.

9.2. Phone

Customers may submit support issues via phone to the Varonis support line. The applicable phone numbers are at <http://www.varonis.com/services/support/index.html>. The support line is monitored by a messaging service. When contacting the support line, please provide the representative a detailed message and a Varonis support representative will return the call.

9.3. Support Web Site

Customers may submit support issues via the Varonis support web site at <http://support.varonis.com>. Tickets that were submitted via the web will be handled and tracked as tickets that were submitted by email.

10. The Support Services provided by Varonis pursuant to the principles herein do not and shall not cover any migration services or tools provided by Varonis, if any, and do not and shall not include any training services of any kind whatsoever.

VBrick Systems, Inc.
12 Beaumont Road
Wallingford, CT 06492

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **VBrick Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VBRICK SYSTEMS, INC.

VBRICK SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

GRANT OF LICENSE

The Software Product is being licensed, not sold, to Ordering Activity. In accordance with and subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a personal, non-transferable, non-exclusive license to use the object code version of the Software Product and Documentation. All rights and title in and to the Software Product and Documentation and all derivative works thereof (as such term is defined by the United States Copyright Act (as amended) at Title 17 U.S.C. and in accordance with FAR 52.227-19), including without limitation copyrights and trade secret rights, belong to Contractor and/or its partners, licensors and suppliers (collectively, "Suppliers"), and Contractor and its Suppliers hold title to each copy of the Software Product and Documentation, and any portion thereof. Contractor and its Suppliers reserve all rights to the Software Product and Documentation not expressly granted to Ordering Activity herein. This Attachment A grants Ordering Activity the following rights:

Software Product. Ordering Activity may install and use one copy of the Software Product, or any prior version for the same operating system, only on the number of computers and users for which the license is given pursuant to Ordering Activity's Purchase Order. In addition, Ordering Activity may make a copy of the Software Product for backup purposes at no cost. Except as expressly provided herein, Ordering Activity may not copy, nor encourage or allow copying of, the Software Product or Documentation. Ordering Activity may not cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination or other distribution of the Software Product or the Documentation by any means or in any form without Contractor's prior written consent.

Storage/Network Use. Ordering Activity may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product on Ordering Activity's other computers over an internal network; however, Ordering Activity must acquire either a Single User License for each separate computer on which the Software Product is installed or run from the storage device, or a Single Building License or an Enterprise License (defined below). If Ordering Activity have acquired appropriate licenses to allow installation of the Software Product on a computer file server within Ordering Activity's internal network Ordering Activity may also use such server to push firmware updates to other VBrick products. No server or network use of the Software Product is permitted except the uses expressly permitted in this Attachment A.

Single User License. Ordering Activity may use the Software Product on one computer only, or must have a license for each computer on which the Software Product is installed. A Single User License for the Software Product may not be shared or used concurrently on different computers or by separate users unless otherwise specified in Ordering Activity's Purchase Order.

Connection License. Ordering Activity is granted license to interconnect a single external server to Ordering Activity's VBrick Server Software; additional connections require purchase of additional connection licenses.

No Modification. Ordering Activity may not alter or modify the Software Product or create a new installer for the Software Product. The Software Product is licensed and distributed for viewing, distributing, and sharing media files. Ordering Activity is not authorized to integrate or use the Software Product with any software except software authorized by Contractor.

Automatic Connection. THE SOFTWARE PRODUCT MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE ORDERING ACTIVITY'S COMPUTER TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE PRODUCT MAY TRANSMIT ORDERING ACTIVITY'S SERIAL NUMBER TO CONTRACTOR OR ITS SUPPLIERS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE THAT ARE NOT PERMITTED.

Third-Party Website Access. The Software Product may allow Ordering Activity to access third-party websites ("Third-Party Sites"). Ordering Activity's access to and use of any Third-Party Sites, including but not limited to any goods, services, or information made available for such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third-Party Sites are not owned or operated by Contractor or its Suppliers. ORDERING ACTIVITY'S USE OF THIRD-PARTY SITES IS AT ORDERING ACTIVITY'S OWN RISK. NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS, OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE THIRD-PARTY SITES.

Compliance With Licenses. If Ordering Activity is an entity, Ordering Activity agree that upon request from Contractor or Contractor's authorized representative, Ordering Activity will within thirty (30) days fully document and certify that use of any and all Software Products at the time of the request is in conformity with Ordering Activity's valid license(s) from Contractor and/or its Suppliers.

OTHER RIGHTS AND LIMITATIONS

Limitations on Reverse Engineering, Decompilation, and Disassembly. Ordering Activity may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Ordering Activity may not use the Software Product to conduct a service bureau or similar business for the benefit of third parties. Ordering Activity may not modify, adapt, translate, or otherwise create derivative works based on the Software Product or Documentation.

Separation of Components. The Software Product is licensed as a single product. Its component parts may not be separated for use on more than one computer beyond the licensed number of users. If the Software Product is an upgrade or a revision of a component of a package of software programs that Ordering Activity licensed as a single product, the Software Product may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

Dual Media Software. Ordering Activity may receive the Software Product in more than one medium. Regardless of the type or size of medium Ordering Activity receive, Ordering Activity may use only one medium that is appropriate for the computer or computers for which the license is given (pursuant to the Purchase Order). Ordering Activity may not use or install the other medium on another computer. Ordering Activity may

not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided below) of the Software Product.

Support Services. Contractor through VBrick may or may not provide Ordering Activity with support services related to the Software Product ("Support Services"). Any supplemental software code provided to Ordering Activity as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Attachment A. With respect to any technical information Ordering Activity may provide as part of the Support Services, Contractor through VBrick may use such information for its business purposes, including but not limited to product support and development.

COPYRIGHT

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), the Documentation or other accompanying printed materials, and any copies of them are owned and retained by Contractor and/or its Suppliers. Copyright laws and international treaty provisions protect the Software Product. Therefore, Ordering Activity must treat the Software Product like any other copyrighted material, except that Ordering Activity may install a copy of the Software Product on a single computer, storage device or as otherwise provided in this Attachment A, provided that Ordering Activity keep the original solely for backup or archival purposes. Ordering Activity may not copy the printed materials accompanying the Software Product.

U.S. GOVERNMENT RESTRICTED RIGHTS

The Software Product and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, or RESTRICTED RIGHTS notice per 52.227-14 as applicable. Manufacturer is VBrick Systems, Inc. 12 Beaumont Road, Wallingford, CT 06492 USA.

LIMITED WARRANTY

THE SOFTWARE PRODUCT AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCT'S OR THE DOCUMENTATION'S TITLE, NONINFRINGEMENT OF THIRD PARTY'S RIGHTS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER CONTRACTOR NOR ITS SUPPLIERS WARRANT THAT THE SOFTWARE PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT IT MEETS ORDERING ACTIVITY'S REQUIREMENTS, OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR HARDWARE.

THE ENTIRE RISK AS TO THE USE, QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCT AND DOCUMENTATION IS WITH ORDERING ACTIVITY. NEITHER CONTRACTOR NOR ITS SUPPLIERS IS OBLIGATED TO PROVIDE ANY SUPPORT SERVICES TO ORDERING ACTIVITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF ALL WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

EXHIBIT A – VBRICK WARRANTY AND SUPPORT

THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

PRODUCTS OR PARTS WHICH ARE SAMPLES OR PROTOTYPES ARE SOLD "AS IS" "WHERE IS" WITH ALL FAULTS, *i.e.* WITHOUT ANY WARRANTY WHATSOEVER.

WHEN SUBMITTING AN ORDER FOR SOFTWARE MAINTENANCE (REFERED TO THROUGHOUT THIS DOCUMENT AS SUPPORT SERVICES) ORDERING ACTIVITY MUST CERTIFY THAT ORDERING ACTIVITY HAS READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE FOLLOWING ATTACHMENT A TERMS AND CONDITIONS. ADDITIONALLY, IF ORDERING ACTIVITY IS ACTING AS AN EMPLOYEE OR AGENT OF THE ORDERING ACTIVITY FOR THE VBRICK PRODUCT FOR WHICH SOFTWARE SUPPORT SERVICES ARE TO BE PROVIDED, ORDERING ACTIVITY FURTHER CERTIFY THAT ORDERING ACTIVITY HAS FULL LEGAL AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS ATTACHMENT A ON BEHALF OF THE ORDERING ACTIVITY.

DO NOT SUBMIT ORDERING ACTIVITY'S ORDER UNTIL ORDERING ACTIVITY HAS CAREFULLY READ, UNDERSTOOD AND AGREED TO THESE ATTACHMENT A TERMS AND CONDITIONS. IF ORDERING ACTIVITY DOES NOT AGREE TO THESE ATTACHMENT A TERMS AND CONDITIONS, OR IF ORDERING ACTIVITY DOES NOT HAVE LEGAL AUTHORITY TO ACCEPT THEM ON BEHALF OF THE ORDERING ACTIVITY, CONTRACTOR WILL NOT ACCEPT ORDERING ACTIVITY'S ORDER.

THE CHART BELOW IS A SUMMARY OF THE WARRANTY TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY ARE AS SET ONWARD BELOW.

VBrick Maintenance Services Offerings	Gold Program	Gold Plus Program	Platinum Program

• Hardware Warranty. Standard RMA (guarantee five-day turnaround after receipt)	Yes	Yes	Yes
• Hardware Warranty. Next day RMA			Yes
• Minor Software releases and patches	Yes	Yes	Yes
• Major Software releases		Yes	Yes
• E-mail/Phone Support (Response within 24 business hours)	Yes	Yes	
• E-mail/Phone Support (Response within 4 business hours)			Yes
• Level 3 Telephone Support 8:30 – 7 pm (Monday to Thursday)	Yes	Yes	Yes
• Level 3 Telephone Support 8:30 – 5:30 (Friday)			
• Level 1, 2 Telephone Support 8:30 – 7 pm (Monday to Thursday)			Yes
• Level 1, 2 Telephone Support 8:30 – 5:30 (Friday)			
• After hours priority number (Level 3 only. 4 hour response time)			Yes
• Web-Based Knowledgebase	Yes	Yes	Yes
• Onsite Support (Level 3 only)			Yes*

I. PRODUCTS COVERED.

Contractor warrants to Ordering Activity the VBrick Software and Manufactured Equipment, including hardware, software and firmware (the "Equipment"): (i) to be free from defects in material and workmanship under normal use and service, and (ii) to conform in all material respects to the printed specifications for the Equipment which have been delivered to Ordering Activity in connection with Ordering Activity's purchase of the Equipment.

Provision of Software Maintenance Software Support Services by Contractor through VBrick are conditioned upon Ordering Activity having deployed the current shipping release of the respective VBrick Product for which such Software Support Services are to be provided*. Only these Attachment A terms and conditions, notwithstanding any preprinted or other terms and conditions on Ordering Activity's Purchase Order shall govern Ordering Activity's purchase and Contractor's provision of Software Support Services.

*Upgrades to the latest version will be provided free of charge according to the program purchased by the Ordering Activity. Contractor does not guarantee it can support versions of software other than the current shipping release.

II. LENGTH OF WARRANTY.

Warranty and Software Maintenance shall commence upon the date indicated in the Contractor confirmation notice and shall continue in full force and effect for a period of one (1) year. Ordering Activity may, at the time of your initial order, purchase up to five (5) years of Subscription Service. Contractor will provide Ordering Activity with no less than thirty (30) days prior written notice of any pending Software Subscription Service changes with details on any pricing and/or modifications to these Attachment A terms and condition.

III. WHO OR WHAT IS COVERED?

This Limited Warranty covers only the VBrick Software and VBrick Manufactured Equipment acquired by the original Ordering Activity.

IV. EXCLUSIONS.

This warranty shall be void if the Ordering Activity fails to use or maintain the Software or Equipment in accordance with Contractor's specifications or instructions, or if the Software or Equipment or any part thereof has been subject to any unauthorized modifications, improper operation, user negligence, service by an unauthorized person, company or association, use with any unauthorized attachment, device or feature, accident neglect, misuse, tampering, acts of God, or any event other than ordinary use.

The following points are not included in Contractor's Limited Warranty and Gold and Platinum programs

- Support on any product not manufactured or produced by VBrick
- Professional services:
 - Integration with 3rd party equipment,
 - Installation support for new VBrick equipment
 - Contractor through VBrick Technical Support Services personnel performing or providing over the phone a step by step upgrade of the Equipment.
 - Support Services related to the relocation of VBrick equipment or the elimination or addition of new VBrick equipment or third party equipment, such as network equipment, audio and video devices, or custom software applications or programs.
 - Feasibility Studies
 - Equipment Upgrades/Updates that also require hardware upgrades in order to utilize new functionality of the software. Any such hardware upgrades is not covered. Ordering Activity may purchase the hardware upgrades at the price set forth in the latest-current Contractor GSA Price List.

V. LIMITATION OF LIABILITY.

Contractor's obligation and Ordering Activity's remedy for any failure of the Equipment is limited to the repair or replacement of any part of the Software and/or Equipment at Contractor's discretion, which examination shall disclose to Contractor as defective. Contractor reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the Equipment. Nothing herein shall obligate Contractor to

make such a refund.

Software Updates and Upgrades: If Contractor, in its discretion, creates Software Updates or Software Upgrades to the VBrick Product during the term for which Ordering Activity has purchased Software Support Services, Contractor shall provide all such Software Updates and Software Upgrades to Ordering Activity designated technical contact. Distribution of Software Updates or Software Upgrades does not include installation by Contractor. Contractor will provide Ordering Activity with all such Software Update or Software Upgrades when Contractor makes them available to its general customer base for the VBrick Product. All Software and related materials provided pursuant to Software Support Services, including documentation and program materials are subject to these Attachment A terms and conditions for the VBrick Product.

VI. HOW TO OBTAIN WARRANTY SERVICE.

To receive warranty services, Ordering Activity must register equipment under their name upon arrival at <http://registration.vbrick.com>, or via mail to:

Technical Support Services – Registration Department
12 Beaumont Rd
Wallingford, CT 06492

Ordering Activity must notify Contractor through VBrick promptly by telephone, and/or via our website of any alleged defect with the Equipment or software, including a detailed description of such alleged defect. For warranty verification purposes, the Ordering Activity must furnish VBrick Technical Support Services with the equipment serial number or warranty contract number. Failure to provide this number may delay service response time or require payment for services. VBrick's telephone number for warranty service is (203) 303-0222. VBrick's support website is located at <http://www.vbrick.com/support>. Upon notifying VBrick of an alleged defect with the Equipment and after defect has been verified by VBrick's Technical Support Services, Ordering Activity agrees not to use the Equipment until further notice by VBrick. Ordering Activity shall bear all risks of operation, if Ordering Activity operates the Equipment prior to VBrick's determination that the Equipment is suitable for operation, and VBrick shall bear no liability whatsoever for any damages, losses or claims that may arise due to such operation.

Upon notification of a possible defect and after defect has been verified by VBrick's Technical Support Services, Contractor through VBrick will provide to customer a Return Merchandise Authorization ("RMA").

Technical Customer Support is available via telephone at (203) 303-0222, email: support@vbrick.com, or website: <http://www.vbrick.com/support>, from 8:30 AM to 7:00 PM Monday to Thursday and 8:30 AM to 5:30 PM Friday (U.S. Eastern Time).

Priority will be given to Ordering Activities who have purchased Extended Warranty / Maintenance Program. Expected response time for Gold products is 24 business hrs and 4 business hrs for Platinum products.

VII RETURN MATERIAL AUTHORIZATION (RMA)

All equipment under abnormal operation must be verified by a VBrick Technical Customer Support representative before it is assigned a Return Material Authorization (RMA) number. If Ordering Activity elects to avoid the verification process, a PO for VBrick's in-house diagnostics fee (consult latest GSA price list for diagnostics fee charges) will be required. If equipment is deemed faulty, diagnostic fees will be void.

Replacement equipment will not be shipped without an RMA number assigned. All Equipment received by Contractor through VBrick without an RMA number will be returned to the Ordering Activity without being repaired. Ordering Activities must return the Equipment in need of repair with the same serial number as reported in the RMA. If equipment with a different serial number is returned under the RMA, the equipment will be returned without being repaired. Ordering Activity is responsible for properly packing the Equipment before it is shipped to Contractor through VBrick.

If Contractor through VBrick determines that the defect was not caused by accident, improper use, abuse, neglect, unauthorized alteration or service, inconsistent use with the specifications or any use other than ordinary use, VBrick shall, at its option, repair or replace the applicable part(s) of the Equipment within the limits of the program in which the Equipment is enrolled, and at VBrick's expense, return the Equipment to the Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Next Day Shipment: ensures that a replacement for defective Equipment will be shipped to the Ordering Activity before requiring the Ordering Activity to return the defective Equipment to Contractor through VBrick. Equipment will be shipped to arrive at Ordering Activity's site the next business day after dispatch. However, any requests for replacement Equipment processed in North America after 3:00 PM Eastern Time (ET) may ship the following business day for second business day delivery. Any international requests for replacement processed after 3:00 PM ET may ship the following business day for international delivery. Delivery times depend upon each country customs regulations. Contractor through VBrick is not responsible for any customs or tax charges related to any country other than the U.S.A. A replacement Equipment may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to VBrick within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Ordering Activity.. Any single request for a single shipment of five (5) or more Equipment of the same type may be subject to delays.

DOA (Dead on arrival): A product can be deemed as DOA, after troubleshooting by Contractor through VBrick Technical Support Services, if it is not fully functioning when it is setup for the first time or received with damage. It does not have to be completely dead or non-functioning to qualify for DOA. It could be anything from a unit not powering up to a unit with a bent connector. If it's not fully functional or has damage when opened and setup for the first time, it qualifies as "DOA" and eligible for a cross ship replacement if within 30 days of the original ship date and registered runtime of the product is not more than 4 days. After 30 days, follow normal RMA process unless Manager of Support Services approves expedited RMA process.

VIII. REPLACEMENT PARTS.

Parts replaced during the Limited Warranty Period, as applicable, will be covered for the remaining term of such period or for thirty (30) days from time of replacement, whatever is longer. Such replacement parts may, at Contractor's option, be new or remanufactured. All parts removed from warranted Equipment shall become property of Contractor.

IX. PLATINUM PROGRAM - EXTENDED WARRANTY / MAINTENANCE -

Ordering Activities may purchase VBrick's Extended Warranty / Maintenance Program (Platinum) for their equipment at any time within thirty (30) days from the date indicated in the VBrick confirmation notice -and for additional 1 year incremental periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program").

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and major software releases.

X. GOLD and GOLD PLUS PROGRAMS - EXTENDED WARRANTY / MAINTENANCE -

Contractor through VBrick's Limited Warranty Gold Program is in effect for one (1) year from the date indicated in the VBrick confirmation notice -and for additional periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program"). Periods must be consecutive one to each other. Ordering Activity shall not be allowed to renew the program for their Equipment and/or Software in the case the program period expired for the Equipment and/or Software in question and Ordering Activity missed to renew between 30 days of renewal due date.

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and minor software releases.

XI. SOFTWARE COVERAGE

Software: means all computer programming code, entirely in binary form, which is directly executable by a computer and includes those computer programs which have been licensed to Ordering Activity either as a separate product or as part of another VBrick Product.

Software coverage includes the following:

- Major Software Release (Software Upgrade): initial or new version of a software product or application. It means a version of the Software as classified by Contractor through VBrick which has been enhanced, improved and/or modified and replaces the existing version of the Software. This includes any minor software releases, user interface changes, usability changes, and new features and functions. As an example a major release is denoted by a version change from 2.0 to 3.0
- Minor Software Release (Software Update): piece of software designed to correct discovered deficiencies and/or bugs affecting performance to the software description, program or its supporting data. This includes improved performance, bugs fixes, or graphics replacement. As an example a minor releases is denoted by version changing from 2.0 to 2.1.
- Software upgrades during the Extended Warranty/Maintenance Program period. The upgrades will be provided to the Ordering Activity via CD-ROM or VBrick's website. The Ordering Activity is required to perform the upgrade.
- Software upgrades may not include upgrades that require disassembly of the Equipment.

XII. HARDWARE COVERAGE

Hardware coverage includes the following:

- Repair or replacement of defective Equipment during Warranty Program period.
- Firmware upgrades (upgrades of code that require disassembly of Equipment).

XIII. TECHNICAL SUPPORT SERVICES

The following is an explanation of services performed at each level:

- Level 1: provide answers and helpdesk for Equipment features. Basically all the "what" questions. This information can be found in the Equipment Documentation.
- Level 2: diagnose and troubleshoot complex network problems including multicast issues. Diagnose and troubleshoot Server software related problems. Provide answers on how to perform upgrades. Basically able to answer the entire "how" questions. This information can be found in the Equipment documentation and in training materials.
- Level 3: diagnose and troubleshoot "error and abnormal Equipment behaviors".

Onsite Support: When a problem cannot be resolved by utilizing remote technical support, Contractor through VBrick will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Ordering Activity. VBrick will not be held responsible for delays in the delivery of the services due to Ordering Activity's stoppage to provide access to Ordering Activity's facilities or due to security requirements. Contractor through VBrick may comply with all Ordering Activity imposed security requirements.

The Extended Warranty/Maintenance Program is obtained in the manner outlined in Part IX, X above and is limited as provided in the introduction and Parts III, IV, V, VII, VII and XI, XII, XIII above.

XIV. PRODUCTS OUT OF WARRANTY RE-JOINING A WARRANTY PROGRAM

- No product can be renewed under the old warranty program except for products from Ordering Activity and only until the new GSA pricing becomes effective.
- If warranty coverage has lapsed, there can be NO Hardware repair claim made for a minimum of 60 days after the renewal. If a claim is made within the first 60 days - it will be billed to the Ordering Activity at then-current GSA repair rate.

XV. REPAIR SERVICE OUTSIDE WARRANTY OR MAINTENANCE PROGRAM POLICY.

In the event that Equipment requires service that is not covered by Contractor's Limited Warranty or any other Program, Equipment may be shipped to Contractor through VBrick for repair. Ordering Activity must notify VBrick's Technical Customer Support of the problem via telephone at (203) 303-0222, or via website at <http://www.vbrick.com/support>, obtain a RMA and ship the Equipment to VBrick, at Ordering Activity's expense. Repairs are performed under flat fee charges (please refer to latest Contractor's GSA price list for charges). Contractor through VBrick will repair the Equipment within five (5) business days from the date the equipment is delivered at VBrick's facilities and will, at VBrick's expense, return the Equipment to Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Limited Services Warranty. THE PROVISION OF SOFTWARE SUPPORT SERVICES DOES NOT EXTEND, MODIFY OR ENHANCE THE ORIGINAL SOFTWARE WARRANTIES, IF ANY, FOR THE VBRICK PRODUCT (S). CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT SERVICE(S) PROVIDED HEREUNDER.

Vectra Networks, Inc.
550 South Winchester Blvd, #200
San Jose, CA 95128

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Vectra Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - ss) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - tt) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - uu) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - vv) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - ww) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - xx) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - yy) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - zz) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- aaa) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- bbb) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- ccc) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- ddd) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- eee) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- fff) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- ggg) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- hhh) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- iii) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- jjj) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- kkk) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- lll) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- mmm) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- nnn) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

VECTRA NETWORKS, INC.

VECTRA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

ATTACHMENT A - VECTRA NETWORKS, INC.

1 Definitions

“Hardware” means the VECTRA hardware products set forth in the Order.

“Product” means the VECTRA security services product(s) set forth in the Order that consist of Hardware, Software, and/or Subscriptions.

“Order” means an ordering document issued by Ordering Activity that specifies Product(s) to be provided under this Agreement.

“Software” means the executable code version of VECTRA’s software products set forth in the Order and any updates thereto furnished by VECTRA under this Agreement.

“Subscriptions” means subscription-based Software or services provided by VECTRA to Ordering Activity for a fixed or recurring period, subject to subscription fees for each such period as set forth in the Order.

2 Scope

2.1 Authorized VECTRA Resellers. While VECTRA shall remain the “licensor” for purposes of the grant of the licenses and other rights hereunder, and Ordering Activity shall remain the “licensee” for purposes of the obligations contained herein, Ordering Activity shall contract directly with the authorized VECTRA reseller for the purchase of Hardware and/or Maintenance provided by such authorized VECTRA reseller.

3 Products and Services

3.1 Reserved.

3.2 Software License. Subject to the terms and conditions of this Agreement and the applicable Order, VECTRA grants to Ordering Activity a nonexclusive, nontransferable, limited license to use the Software in accordance with the applicable user documentation and license keys provided by VECTRA solely for Ordering Activity’s internal use: (i) at the Ordering Activity facility authorized in the Order, (ii) during the period for which Ordering Activity has purchased a then-current license and Subscription, (iii) by Licensee employees up to the number of users for whom then-current licenses and Subscriptions have been paid, and (iv) for the measured bandwidth usage (“Measured Usage”), up to the service level set forth in the Order (“Service Level”).

3.3 Subscriptions. The Subscriptions will commence on the Effective Date (or other applicable start date specified in the Order) and will continue for the period set forth in the Order (the “Initial Subscription Term”).

3.4 Maintenance and Services. To the extent maintenance services are provided by VECTRA, such maintenance services are subject to Exhibit A (“Maintenance”). Installation, training and other support services may be provided if set forth in the Order, subject to the terms set forth in Exhibit A.

3.5 Evaluation. Any Hardware, Software or Subscriptions provided for evaluation or at no charge or for a nominal charge may only be used for evaluation during the evaluation period set forth in the Order, not to exceed 90 days (“Evaluation Period”) and solely for considering whether to purchase the applicable Product from Ordering Activity and not for any other purpose or any productive use. Ordering Activity shall return and discontinue all use of such Products at the end of the Evaluation Period.

3.6 Restrictions. Ordering Activity shall not (and shall not permit any third party to) (i) copy, modify, translate, reverse engineer, decompile, disassemble or otherwise reduce the Software or Subscriptions to human perceivable form or attempt to discover underlying source code, algorithms or techniques, except to the extent that such activities may not be prohibited under applicable law, (ii) provide, lease, use for timeshare or service bureau purposes, or lend or otherwise allow use of any Product by or on behalf of any third party or at any location other than the Ordering Activity facility authorized in the Order, (iii) disclose any benchmarking, competitive analysis or other results obtained from any Product or use any Product or portion thereof to develop any similar item or any competitive products or services, (iv) use or remove the applicable Software or Subscriptions from any Hardware on which or for which they are provided under the applicable Order, (v) attempt to disable or circumvent any license key, encryption or other security device or mechanism used in connection with the Product, Software or Subscriptions; or (vi) remove or otherwise interfere with any portion of the Product designed to monitor Ordering Activity’s compliance with this Agreement. Ordering Activity acknowledges that Software and Subscriptions may include license keys and other features that disable use at the end of the applicable license or Subscription Term, or once the Service Level set forth in the Order is met.

3.7 Proprietary Rights. The Software and Subscriptions are licensed and not sold. VECTRA shall retain ownership of all Software and Subscriptions and all intellectual property rights relating thereto. Ordering Activity agrees that VECTRA may use and exploit without restriction any error reports, suggestions and other information provided by Ordering Activity with respect to the Products and shall own any fixes, modifications, improvements and new versions made by VECTRA based on such information. The Products, Software, documentation and other non-public information provided by VECTRA are confidential to VECTRA and shall not be disclosed by Ordering Activity to any third party. All implied licenses are disclaimed and all rights not expressly granted herein are reserved to VECTRA.

3.8 Data Access. VECTRA collects personally identifiable information uploaded during registration or account administration and information provided during support requests (collectively, “Ordering Activity Administrative Data”). Ordering Activity Administrative Data includes, for example, name, email address, phone number, and VECTRA-generated licenses associated with a Ordering Activity’s account or email address. In the provision of the Product or a Subscription (including services

related thereto), VECTRA may receive, store, process, and utilize network traffic data, including system stability data, threat detection information, user experience data, user interface data, and session and detection metadata (including packet capture data) (such data, “Ordering Activity Traffic Data” and, together with Ordering Activity Administrative Data, all such data is “Ordering Activity Data”). Without limiting the foregoing, VECTRA may automatically access, process, and retain Ordering Activity Traffic Data transferred on networks to which Ordering Activity connects any Product for purposes of product improvement, analysis, and evaluation as follows:

- a. Default Access. VECTRA may monitor and access: (i) system stability data, including uptime statistics for various processes; hardware, software and network failure indicators; and back trace and call stack data; (ii) threat detection information, including the number, type and score of each threat detection instance (based on VECTRA proprietary metrics); the attribution of each threat detection to an anonymized host; and the score for each anonymized host; (iii) anonymized user experience data, including the last login time; the frequency of logins; and User Interface clickstream data; and (iv) interface data.
- b. Optional Metadata Access. As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Section 00a) monitor and access nonidentifying session and detection metadata, including DNS, HTTP and session data; detection details; host ID mapping data; and precursors.
- c. Optional Virtual Private Network (“VPN”) Access. As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Sections 0a and 0b) receive VPN access to Ordering Activity’s network, monitor and access packet capture data, and facilitate troubleshooting. 3.9 Data Access Consent. Ordering Activity acknowledges that the Products detect threats and attacks by monitoring Ordering Activity Data, and that the Products may be less effective in detecting threats, attacks, or other suspicious or unauthorized activity if the Products do not have adequate access to Ordering Activity Data. Ordering Activity authorizes and directs VECTRA to store, process, retrieve, and disclose Ordering Activity Data for the following purposes: (i) providing service to Ordering Activity; (ii) analyzing, maintaining and improving VECTRA’s products and services; (iii) complying with legal, governmental or contractual terms or requirements, including without limitation good faith efforts to comply with such terms or requirements; (iv) making malicious or unwanted content anonymously available to its licensors for the purpose of further developing and enhancing VECTRA products and services; and (v) anonymously aggregating and statistically analyzing malicious or unwanted content. In addition, VECTRA may use Ordering Activity Administrative Data for the following purposes: (i) to inform Ordering Activity about products, seminars and services VECTRA believes may be of interest to you; (ii) to contact Ordering Activity if VECTRA needs to obtain or provide additional information; and (iii) to verify the accuracy of VECTRA’s records. VECTRA may use web analytics and cookies as set forth in the VECTRA Privacy Policy attached.

3.10 Data Protection by Ordering Activity. Ordering Activity represents and warrants that Ordering Activity’s use of the Products and Subscriptions complies with all applicable laws, including those related to data privacy, data security, and international communications and that Ordering Activity has obtained any and all consents necessary for VECTRA to engage in data processing under this Agreement. Submission or provision of Ordering Activity Data to VECTRA shall be at Ordering Activity’s own risk, and VECTRA assumes no responsibility or liability for receipt of such Ordering Activity Data.

3.11 Reserved.

4 **Reserved.**

5 **Reserved.**

6 **Limited Warranty**

6.1 Limited Warranty. Hardware as delivered by VECTRA will be free from material defects in materials and workmanship for a period of ninety (90) days from the date of shipment. Ordering Activity’s sole remedy, and VECTRA’s exclusive liability, with respect to such warranty will be to repair, replace or provide a refund of the purchase price (at VECTRA’s option) for the defective Hardware or portion thereof, subject to return within the applicable warranty period in accordance with VECTRA’s return materials authorization (RMA) procedures and provided the defect is not due to accident; unusual physical, electrical or electromagnetic stress; neglect; modification, alteration or misuse; or failure to properly install, operate and maintain in accordance with the manufacturer’s specifications. Software and Subscriptions are subject to maintenance as set forth in Exhibit A and not warranty. VECTRA does not warrant that Product will meet Ordering Activity’s requirements or function uninterrupted or error free. EXCEPT AS EXPRESSLY SET FORTH ABOVE, PRODUCTS, SOFTWARE, HARDWARE, SUBSCRIPTIONS AND ANY SERVICES ARE “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND VECTRA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

6.2 RMA Procedures. Prior to return of any Hardware, Ordering Activity will execute and report the results of any tests or diagnostics specified by VECTRA, confirm limited warranty status with VECTRA and obtain and affix an RMA number from VECTRA prior to shipment. Returns with RMA number are to be shipped by Ordering Activity, freight pre-paid, to VECTRA’s designated return or repair facility, so that they are received within 2 weeks of obtaining the RMA number. Any Hardware found to be out-of-warranty, including any with a voided warranty, is subject to charges for processing and repair or replacement at VECTRA’s then-current GSA Schedule Contract rates.

7 **Reserved.**

8 Reserved.

9 Export; FCPA. Products may not be exported without prior written consent of VECTRA. Ordering Activity warrants and hereby gives written assurance to VECTRA that Ordering Activity will comply with all U.S. and foreign export and re-export restrictions applicable to the Products, documentation and technical information provided hereunder. Company warrants that it shall comply with the Foreign Corrupt Practices Act ("FCPA") in all dealings with, by, for or on behalf of VECTRA, and shall not offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind that would or could be construed as an illegal or corrupt practice.

10 Reserved.

Vectra Networks privacy policy

This Privacy Policy is designed to assist you in understanding how we collect and use personal information related to our website www.vectranetworks.com. References to "Vectra," "we," "our" and "us" refer to Vectra Networks, Inc.

Registration Information

When you register to download content from Vectra, we may ask you to provide us with personal information that may include your name, company, job position, email address, and phone number.

We are committed to protecting your privacy. Authorized employees within the company on a need to know basis only use any information collected from individual visitors. We constantly review our systems and data to ensure the best possible service to our customers. We will not sell, share or rent your personal information to any third party.

User Communication

If you send us email or other communications, we may retain the content of your communications together with your email address and our responses.

We may send you information that we think you will find interesting. If you want to be removed from our mailing list at any time, you may opt out of these communications by contacting info@vectranetworks.com

Links to External Sites

We are not responsible for the practices employed by websites linked to or from our website nor the information or content contained therein. Often links to other websites are provided solely as pointers to information on topics that may be useful to the users of our website.

Please remember that when you use a link to go from our website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including websites which have a link on our website, is subject to that website's own rules and policies. Please read over those rules and policies before proceeding.

We reserve the right to modify this privacy statement at any time. If we change how we use your personally identifiable information, we will notify you here, by email, or by means of a notice on our home page.

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EXHIBIT A

Maintenance Services

1. Maintenance Term. Maintenance service as set forth in this Exhibit A ("Maintenance Services") commence on the Effective Date (or other applicable start date specified in the Order) and will continue until the end of the Subscription Term. If Ordering Activity elects not to renew Maintenance Services or fees are not kept current, Ordering Activity may re-enroll only upon prior written consent of VECTRA and payment of the applicable subscription fee for the coming period and all fees that would have been paid had Ordering Activity not discontinued Maintenance Services.
2. Maintenance Services. If Ordering Activity purchases such Maintenance Services, the following Maintenance Services will be made available during the applicable Subscription Term: (a) Updates released during the Subscription Term, and (b) Error resolution assistance for Errors in the Software reported by Ordering Activity during the Subscription Term, as further described below. Maintenance Services and Support will be provided only with respect to the then current version of the Software and only for active Subscriptions. VECTRA shall have no obligation to provide Maintenance Services or Support for: (i) altered or damaged Software or any portion of the Software incorporated with or into other software; (ii) Software or Subscription problems caused by Ordering Activity's negligence, abuse or misapplication, use of the Software or Subscriptions other than as specified in VECTRA's user manual or other causes beyond the control of VECTRA; or (iii) Software or Subscriptions installed or used on any hardware that is not supported by VECTRA. Support requests may be submitted online 24/7 at support.vectranetworks.com. For Error resolution assistance, VECTRA will use commercially reasonable efforts to correct any Error reported by Ordering Activity in the Software attributable to VECTRA, employing a level of effort commensurate with the severity of the Error, provided, however, that VECTRA shall have no obligation to correct all errors in the Software.
3. Ordering Activity Responsibilities. Ordering Activity is responsible for providing sufficient information and data to allow VECTRA to readily reproduce all reported Errors. If VECTRA believes that a problem reported by Ordering Activity may not be due to an Error in the Software or cannot be readily reproduced VECTRA will so notify Ordering Activity. Ordering Activity shall document and promptly report all Errors to VECTRA and take all steps necessary to carry out procedures for the rectification of Errors or malfunctions within a reasonable time after such procedures have been received from VECTRA.
4. Certain Definitions. For the purpose of this Exhibit only, the following terms shall have the following meanings:

“Error” means a reproducible programming error in the Software which significantly degrades the Software as compared to VECTRA’s published performance specifications. Correction may be provided by patch, correction in the next Update, work-around or avoidance procedure, or other resolution to remedy the Error.

“Support” means technical support telephone or email assistance provided by VECTRA to a designated Ordering Activity support contact during normal business hours concerning the installation and use of the Product.

“Update” means a maintenance release of the Software designated as such by VECTRA and released on a general, regularly scheduled basis as part of standard maintenance to VECTRA’s other maintenance customers for the same version of the Software without additional charge.

Veeam Software Corporation
8800 Lyra Drive
Suite 350
Columbus, OH 43240

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Veeam Software Corporation** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

VEEAM SOFTWARE CORPORATION

VEEAM SOFTWARE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Important - Read Carefully

This EULA is a legally binding agreement between licensee end user ("End User") and Veeam setting forth the terms and conditions governing the use and operation of Veeam's proprietary computer software products (the "Software") and the written technical specifications for the use and operation of the Software (the "Documentation"). Where the sense and context permit, references in this EULA to the Software include the Documentation. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting this EULA, End User agrees to be bound by the terms and conditions of this EULA. If End User does not agree to or accept the terms of this EULA, End User may not access or use the Software.

1.0 Definitions

1.1 "Fee(s)" means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.

1.2 "Maintenance" and "Maintenance Policies" have the respective meanings set forth in Section 7.0.

1.3 "Transaction" and "Transaction Document" have the following meanings: "Transaction(s)" is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a "Transaction Document(s)"), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Veeam, or authorized third party distributors, dealers, and/or other resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of this EULA will govern and control.

1.4 "Open Source" means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. A current list of Open Source Software used by Veeam can be found at <http://www.veeam.com/eula-oss.html>.

2.0 Grant of License

2.1 License Grant. When the Software is delivered to End User as part of a Transaction, End User will have, subject to the terms and conditions of this EULA, a perpetual, non-transferable, non-exclusive, license ("License"), to use the Software in object code format, solely for government purpose for the management and processing of its own data and not the data of any third party(ies). Veeam Software License is perpetual, unless the Software is delivered to End User as part of a Transaction on a non-perpetual basis for a defined period, in such case, the End User's right to use such Software will cease on the end date of the defined period.

The data processing restriction set forth in the preceding paragraph will not apply to End User if End User a) has been accepted by Veeam, under "Veeam Cloud Provider Program" at <http://www.veeam.com/veeam-cloud-providers.html> and b) has accessed and is utilizing the Software with a stock-keeping unit number that designates End User as a "Cloud Provider" or similar description, thus authorizing End User to utilize the Software to perform systems management services for its customers.

3.0 Additional Terms

Nothing contained in this EULA is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this i) EULA or the License granted to End User pursuant to this EULA; or ii) create or modify the terms a particular Transaction.

4.0 Evaluation License

A License designated as an "Evaluation" License in a Transaction Document authorizes End User to use one (1) copy of the Software for a 30 day period for non-production evaluation or demonstration purposes only.

5.0 Not for Resale License

A License designated as a "Not for Resale" License in a Transaction Document authorizes End User to use one (1) copy of the Software with full functionality for evaluation or demonstration purposes only, and for a defined period of time.

6.0 Limited Term License

A license designated as a "Limited Term" License in a Transaction Document authorizes End User to use one (1) copy of the Software in production environment at End User's site for a defined period of time. The defined period for a "Limited Term" License commences immediately upon generation of the license key.

7.0 Maintenance

Maintenance and support ("Maintenance") for the Software will be available in accordance with Veeam's applicable Maintenance Policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance, End User will receive (a) online support and (b) any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance Policies and are not licensed by Veeam at its discretion to its customers for a separate charge. Veeam's current Maintenance Policies can be found at <http://www.veeam.com/support.html>.

8.0 Copyright and Other Restrictions

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Veeam. All right, title and interest in the Software remains at all times with Veeam. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software, or the results of any benchmark or other tests of the Software, to any third party without the prior written consent of Veeam. End User shall not remove any proprietary notices from the Software. End User may make one copy of the Software solely for backup or archival purposes.

9.0 Limited Warranty and Limitation of Liability

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam will defend or, at its option, settle any action against End User based upon a claim that its use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify End User against any amounts awarded against End User as a result of the claim, provided Veeam is promptly notified of the assertion of the claim and has control of its defense or settlement. Veeam warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Veeam is unable to correct the defect, Veeam's sole and exclusive liability and End User's sole and exclusive remedy shall be a refund of the License fee, if any, paid by End User for the Software. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEEAM OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VEEAM DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THE LIMITED WARRANTY.

In no event will Veeam, its affiliates, resellers, or distributors or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

10.0 Assignment

Except in the event of a sale or transfer by Veeam of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.

11.0 U.S. Government End Users

Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

12.0 General

This Agreement sets forth Veeam's entire obligation and End User's exclusive rights with respect to the Software and, except to the extent otherwise specifically provided in a purchase order or other written communication or advertising signed or jointly issued by both parties with respect to the Software, supersedes any conflicting terms of any purchase order and any other communication or advertising with respect to the Software. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected. To the extent not preempted by federal law or regulation, this EULA will be governed by the laws of the State of Ohio, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods will not apply.

13.0 Export Controls

The Software is subject to U.S. Export Administration Regulations. Veeam prohibits any export or re-export of Veeam Software products, services, or technical data to any destinations subject to U.S. embargoes or trade sanctions, except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the U.S. may prohibit export transactions. The following countries are subject to the United States embargo or restricted trade sanctions: **Burma (Myanmar), Cuba, Iran, North Korea, the Republic of South Sudan, the Republic of the Sudan, Syria**, or any other country with which the United States may prohibit export transactions.

Veriato
4440 PGA Boulevard Suite 500
Palm Beach Gardens FL 33410

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Veriato** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VERIATO

VERIATO LICENSE, WARRANTY AND SUPPORT TERMS

Details of the software licensed and Maintenance (defined below) should be provided on an order. Usage rights and other terms are defined in Exhibit A – Product Guides. The software, updates, documentation, and license serial number (Software) provided under an order, are licensed and are not sold.

1. TRIAL LICENSE. If the Software is provided without the payment of a license fee, then it is provided under a trial license. Veriato grants Ordering Activity a non-exclusive term license to operate the Software for the sole purposes of deciding whether it wants to purchase a license. The Software is provided AS IS, with no warranty during this time period.

2. LICENSE GRANT. Subject to the other terms of this agreement, Veriato grants Ordering Activity, under an order, a non-exclusive and non-transferable perpetual license up to the license capacity purchased to: operate the Software in its business operations and make one copy of the Software for archival and backup purposes.

3. RESTRICTIONS AND OWNERSHIP. Ordering Activity cannot:

- Sublicense, rent or lease the Software or use it as a service provider or as part of a service;
- Reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, or disassemble the Software; or
- Copy any features, functions or graphics of the Software to develop a competitive product.
- Utilize the software for the purposes of competitive analysis or for any other purpose outside of Ordering Activity's normal business operations.

Ordering Activity is entitled only to those rights as are expressly granted by this agreement. Veriato retains all ownership and intellectual property rights in and to the Software.

4. RESERVED.

5. RESERVED.

6. WARRANTY DISCLAIMER. THE SOFTWARE IS PROVIDED 'AS IS.' VERIATO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. RESERVED.

8. RESERVED.

9. ANNUAL MAINTENANCE. If Ordering Activity purchases the Software technical support and update service for a fee (Maintenance), then the following will apply. Details on the Maintenance programs are located <http://www.Veriato.com/support/> FOR INFORMATIONAL PURPOSES ONLY.

10. RESERVED.

11. U.S. GOVERNMENT RESTRICTED RIGHTS. The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable. manufacturer is: Veriato Corporation, 1555 Indian River Blvd., Building B-210, Vero Beach, FL 32960.

12. RESERVED.

13. EXPORT LAWS. Ordering Activity agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Software or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

14. RESERVED.

Exhibit A - Product Guide

This Product Guide states the usage rights and other terms associated with each Veriato product that Ordering Activity has purchased (the "Product Terms").

Here is how you find the Product Terms for Ordering Activity's products:

1. Determine the License Duration. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. The License Duration will either be:
 - Perpetual
 - Term
 - Subscription

For more information about License Duration, see the License Duration table below.

2. Determine the License Category. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. An example is Spector360 Per Monitored End Point. The License Category is Monitored End Point.

For more information about License Category, see the License Category table below.

License Duration Table

License Duration	Description
Perpetual	The license will never expire. The Product can be upgraded to the latest version within the active maintenance period.
Term	The license is granted for a fixed period of time and may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service. When the license expires at the end of the time period, recording will cease unless a new license is applied.
Subscription	The license is granted for a fixed period of time. When the license expires at the end of the time period, the product will cease to operate, and access to data or reporting will no longer be available.

License Category Table

License Category	Description
Monitored End Point	Each computer or device to be monitored. These licenses may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service.
Session Host	Each server or machine hosting thin client computing sessions and/or virtual desktops (for example, by using Citrix, Microsoft, VMware or similar visualization software products or service) to be monitored. These licenses may not be moved from Session Host to Session Host, except in cases where the initially licensed Session Host is taken out of service.
Node	Each unique IP address and/or hostname that is monitored, scanned, or otherwise managed by the Software.
Host	Each server or desktop computer that has an instance of the Software installed on it.

License Category Table

License Category	Description
Floating	Once client software has been installed on a computer, the license may be transferred to another computer, as long as the total count of licenses for client computers does not exceed the number of floating licenses purchased.
Device	Each PC, Mac, Tablet, or Smartphone the Software is installed on. These licenses may not be moved from Device to Device, except in cases where the device is taken out of service.

Ordering Activity is hereby notified that the Software may collect certain information from the Ordering Activity and transmit such information back to Veriato. Such information may include, without limitation, statistics relating to how often the Software and tools are started and completed, the duration of use of the Software, performance metrics relating to the Software, and Software configuration settings.

In addition, Ordering Activity is hereby notified that (1) the Software may require a registration process whereby machine specific identifiers (that have been encrypted and are unique but anonymous) such as the username and email address for the user are transmitted to Veriato's licensing server to allow Veriato to generate a unique key that is bound to the specific computer on which the Software may be used, (2) the Software may communicate with Veriato's servers and allow Ordering Activity to download updates when they are available, (3) the Software may provide a 'Feedback' facility that allows Ordering Activity to send suggestions and ideas for improving the Software ("Feedback"), (4) the Software may include a mechanism to transmit information to Veriato regarding unhandled exceptions, and (5) the Software may make connections to Veriato servers to verify license validity.

Wynyard
1530 Wilson Blvd, Suite 670
Arlington, VA 22209

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Wynyard** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
 - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The

violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Wynyard

Wynyard LICENSE, WARRANTY AND SUPPORT TERMS

SCHEDULE 1 - GENERAL TERMS AND CONDITIONS

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Affiliate	of a party means any entity which directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is in common ownership or control with, that party, and for these purposes control shall be presumed to exist where one entity owns at least 50% of the voting share class of the capital stock of the other entity;
Agreement	has the meaning given on the signature page to which these General Terms and Conditions are attached;
Approved Equipment	means the relevant computer hardware, accessories and attachments and software (including operating systems) meeting the specifications required for the operation of the Software as outlined by our current published Documentation;
Assumptions	means the assumptions, if any, which have been made by us and agreed with Ordering Activity and set out in the applicable agreed Order for Professional Services using the Order Form set out in Appendix 1 to Schedule 4;
Authorized Users	means the Ordering Activity's authorized individual representatives that have access to the Software;
Business Day	means, unless stated otherwise in the relevant agreed Order, a day other than a Saturday or Sunday or public holiday on which banks are generally open for non-automated normal business in the Location;
Change Management Process	means the process for agreeing to any changes to the scope of the Professional Services set out in the agreed Order for such Professional Services
Charges	means our charges for the Software and Services as set out in the relevant Contract;
Concurrent Services Users	means the total number of End Users (as such term is defined under the relevant Software License) which are supported to use the Hosted Software through the Hosting Services at any one time as set out in the relevant agreed Order under Schedule 5;
[Concurrent Users]	[means the individual representatives of Ordering Activity permitted to access the Software at any one time, as set out in the relevant agreed Order for Software;]
Conditions	means these general terms and conditions;
Confidential Information	means any commercial, financial or technical information relating to the products, services, plans, know-how or trade secrets of a party or its Affiliates, any information which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to this Agreement or any Contract, including, without limitation, the source code and any trade secrets in the Software together with all specifications, technical data, information manuals and documentation necessary to understand, maintain, modify or correct the Software;
Contract Commencement Date	means the date set out in the relevant agreed Order when the Contract commences;
CPI	means the Consumer Prices Index for all groups (SE9A) as maintained and published by Statistics New Zealand or any successor body and as published by the Reserve Bank of New Zealand;
Ordering Activity Data	means any data provided by Ordering Activity in connection with their use of the Hosting Services or Hosted Software;
Deliverables	means all documents, reports, programs or other items set out in a Contract for Professional Services for delivery to Ordering Activity as a result of the performance of the Services;
Dependencies	means Ordering Activity's obligations set out in the applicable agreed Order for Professional Services on which the performance of the Professional Services is dependent;
Dispute	means any dispute which may arise under or in relation to this Agreement or any Contract (including non-contractual disputes or claims);
Documentation	means the documentation we provide to Ordering Activity relating to the use and/or functionality of the Software, such as, without limitation, product user guides, installation guides, manuals and release notes;
Effective Date	means the date defined as such on the front of this Agreement, or, where no date is so specified, the date of the last signature on the front of this Agreement;
End Users	means the Authorized Users [and Concurrent Users];
Escrow Agreement	means the standard multi-licensee agreement between us and our chosen supplier for the provision of escrow services for the relevant Software
Escrow Fees	means our charges for adding Ordering Activity as a licensee to our Escrow Agreement as set out in the relevant agreed Order for Software (if applicable);
Excused Cause	means any period where the Hosting Services are Unavailable;

	(i) due to Planned Maintenance; (ii) lasting for two consecutive Service Periods or less; (iii) when Ordering Activity's use of the Hosting Services exceeded the limitations set out in clause 8.1 of Schedule 5; (iv) due to a Force Majeure Event; (v) due to any fault in or other problems associated with, the Internet or any equipment, hardware or software Ordering Activity uses to access the Hosting Services; or (vi) outside of Normal Support Hours.
Good Industry Practice	means in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;
Go-Live Date	means the date when the Hosting Services go into live operational use which will be determined by the relevant Contract for Professional Services under Schedule 4;
Hosting Environment	means the software, hardware and equipment on which the Hosted Software will run, excluding the Hosted Software itself;
Hosting Services	means the Software hosting and related services described in clause 2 of Schedule 5 which we have agreed to provide Ordering Activity pursuant to a Contract agreed under that Schedule;
Hosting Services Fees	means our charges for providing the on-going Hosting Services as set out in the relevant agreed Order under Schedule 5;
Hosting Services Support	means the support services for the Hosting Services as set out in clause 7.1 of Schedule 5;
Hosted Software	means the Software set out in the 'Hosted Software' section of the relevant agreed Order under Schedule 5;
Initial Support Term	means a period of three (3) years commencing on the Contract Commencement Date of the relevant Contract under which the Support and Maintenance Services are to be provided;
Implementation Fee	means our charge for setting up the Hosting Environment as set out the relevant agreed Order under Schedule 5;
Intellectual Property Rights	means all patents, rights to inventions, utility models, copyright and neighboring rights, trademarks, service marks, trade, business and domain names, rights in trade dress, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, semi-conductor topography rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
License Fees	means our charges for the Software licenses granted to Ordering Activity under the relevant Contract, as set out in the agreed Order for Software;
License Parameters	means the parameters we have used to calculate the License Fees (if any) in addition to the License Term, End Users and Licensed Territory, as set out in the agreed Order for Software;
Licensed Purpose	means the limited purpose which Ordering Activity is authorized to use the Software for within Ordering Activity's business as set out in the relevant agreed Order for Software (if applicable);
License Term	means the term of the license granted by us for Ordering Activity's use of the Software as set out in the relevant agreed Order for Software;
Licensed Territory	means the territory where Ordering Activity is authorized to use the Software as set out in the relevant agreed Order for Software;
Location	means the Wynyard place of business where the Personnel providing the Professional Services are normally based or from where the Support and Maintenance Services are to be provided (if applicable) as set out in the relevant agreed Order;
Losses	means all losses, damages, costs (including reasonable attorney's fees) and expenses;
Maintenance Window	means the scheduled two hour window each week when we will be entitled to perform maintenance to the Hosting Environment without needing to provide Ordering Activity with any further notice;
Major Release	means a new version of the Software containing major functional and system additions and/or changes identified by a change in the number to the left of the decimal in our version numbering system i.e. if the current version is n.1 ('n' being a whole integer) then the Major Release number is 'n+1'. Major Releases may also include fixes in our discretion;
Minor Release	means a new version of the Software containing minor functional and system additions and/or changes identified by a change in the number to the right of the decimal in our version numbering system i.e. if the current version is 1.n ('n' being a whole integer) then the minor Release number is '1.n+1'. Minor Releases may also include fixes in our discretion;
Normal Support Hours	means 9:00 a.m. to 5:00 p.m. local time in the Location, each Business Day;
Order	means the relevant order from Ordering Activity for Software and/or Services

Our Materials	means all documents, materials, data, proprietary software (and the media on which they are each recorded), which are owned by us at the date of the relevant Contract or which are subsequently created by us independently of the Contract or as a result of performing the Services;
Personnel	means such of our employees or sub-contractors as may be engaged in the provision of Services from time to time including (if any) those designated in the applicable agreed Order for Professional Services;
Planned Maintenance	means any maintenance to the Hosting Environment carried out during the Maintenance Window together with any Scheduled Maintenance carried out with at least 24 hours' warning or with less warning provided that Ordering Activity has agreed to the timing of such maintenance;
Professional Services	means the professional services we have agreed to supply Ordering Activity pursuant to an agreed Order for professional services;
Quarter	means the relevant three calendar month period, being either January to March, April to June, July to September or October to December, save that where the Go-Live Date occurs at any time after the first day of any such Quarter then the first 'Quarter' shall mean the period from the Go-Live Date to the date immediately prior to the start of the next Quarter;
Rates	means our daily rates for the Professional Services specified in the GSA Schedule Contract
Release	means a Major Release or Minor Release;
Representatives	means Ordering Activity's employees, employees of Ordering Activity's Affiliates, agents, contractors or representatives duly authorized to act on their behalf;
Sales Tax	means sales or use tax or any other similar tax applying to the supply of the Software or Services;
Schedule	means a schedule to this Agreement including any Appendices thereto;
Scheduled Maintenance	means non-emergency maintenance to the Hosting Environment which we carry out outside of the Maintenance Window;
Services	means the applicable services we have agreed to supply Ordering Activity under an applicable Order, which may include, without limitation [Hosting Services,] Support and Maintenance Services and Professional Services;
Service Period	means each period of time beginning at midnight on any day and every five (5) minutes thereafter, and ending immediately prior to the start of the next five (5) minute period;
Software	means any software licensed to Ordering Activity under an agreed Order for software, including any Updates and Releases to such software;
Software License	means the relevant Order for Software under which we granted Ordering Activity a license to use the Hosted Software;
Subsequent Support Term	means a period of one (1) year; unless provided otherwise in an applicable Order
Support and Maintenance Services	means the support and maintenance services set out in Schedule 2;
Support and Maintenance Services Fees	means the charges for the Support and Maintenance Services as set out in the GSA Schedule Contract;
Support and Maintenance Services Term	means the term when we will provide the Support and Maintenance Services for the relevant Software in accordance with clause 1 Schedule 3;
Third Party Software	means any Software which is not proprietary to us;
Unavailable	means any Service Period without a successful response from the Hosting Services test page within ten (10) seconds of the request being sent by us other than due to an Excused Cause;
Update	means functional improvements, scripts and/or fixes for the Software provided in between Releases;
User Acceptance Testing	means the process of acceptance testing configurations to the Software made by us under a Contract for Professional Services which shall be in accordance with clause Error! Reference source not found. of Schedule 4;
Ordering Activity's Materials	means all documents, materials, data, proprietary software (and the media on which they are each recorded), supplied by Ordering Activity to us.

2

Terms and Structure

- 2.1.1 Contracts for Software licenses will be subject to the terms and conditions set out in Schedule 2;
- 2.1.2 Contracts for Support and Maintenance Services will be subject to the terms and conditions set out in Schedule 3; [and]
- 2.1.3 Contracts for Professional Services will be subject to the terms and conditions set out in Schedule 4; and
- 2.1.4 Contracts for Hosting Services will be subject to the terms and conditions set out in Schedule 5.]

- 3 **Reserved.**
- 4 **Affiliates**
 - 4.1 Where we have expressly agreed in an Order to supply Software or Services to Ordering Activity for the benefit of any of their Affiliates, Ordering Activity shall be responsible for ensuring that such Affiliates comply with these terms and conditions and Ordering Activity shall be liable for the acts and omissions of their Affiliates as if they were their acts and omissions.
- 5 **Reserved.**
- 6 **Reserved.**
- 7 **Intellectual Property Rights**
 - 7.1 Each party shall retain all Intellectual Property Rights in their pre-existing and proprietary materials.
 - 7.2 All Intellectual Property Rights and all other proprietary rights in the Software, Documentation and in any materials developed under any Contract in connection with the Services (including any Deliverables) will remain vested in us (or our licensors) and be our (or our licensors') absolute property.
 - 7.3 Except for your right to use Software, Documentation or Deliverables as expressly granted under any Contract, you will not acquire in any way any title, rights of ownership or Intellectual Property Rights of whatever nature in any Software, Documentation or Deliverables.
- 8 **Warranties**
 - 8.1 We warrant that all Services will be provided using reasonable skill and care.
 - 8.2 ALL WARRANTIES NOT SET OUT IN THIS AGREEMENT OR ANY CONTRACT, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED BY STATUTE, AT COMMON LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, ARE HEREBY EXCLUDED TO THE EXTENT PERMITTED BY LAW.
 - 8.3 WHERE WE SUPPLY ORDERING ACTIVITY ANY THIRD PARTY PRODUCTS UNDER ANY CONTRACT (INCLUDING ANY THIRD PARTY SOFTWARE) WE SHALL USE OUR REASONABLE EFFORTS TO PASS THROUGH THE BENEFIT OF ANY WARRANTIES PROVIDED TO US BY OUR SUPPLIER FOR SUCH PRODUCTS. OTHER THAN AS STATED IN THIS CLAUSE 8.3 OR AS EXPRESSLY AGREED IN ANY CONTRACT WE DO NOT PROVIDE ANY WARRANTIES FOR SUCH THIRD PARTY PRODUCTS (INCLUDING ANY THIRD PARTY SOFTWARE) AND WE SHALL HAVE NO OTHER LIABILITY, RESPONSIBILITY OR OBLIGATION TO ORDERING ACTIVITY IN RESPECT OF ANY SUCH THIRD PARTY PRODUCTS (INCLUDING ANY THIRD PARTY SOFTWARE) OR ANY ISSUE WITH THEM.
- 9 **Ordering Activity's Obligations**
 - 9.1 Ordering Activity shall provide us with all necessary information, facilities, support and services reasonably required by us for the performance of our obligations to Ordering Activity under each Order.
 - 9.2 Ordering Activity shall be responsible at their expense for complying with all applicable laws and regulations and obtaining any applicable licenses and consents, relating to the import, export, installation or use of any Software.
- 10 **Reserved.**
- 11 **Reserved.**
- 12 Not Used
- 13 **Reserved.**
- 14 **Reserved.**
- 15 **Reserved.**
- 16 **Reserved.**
- 17 **Reserved.**
- 18 **Reserved.**
 - 18.1

SCHEDULE 2 – SOFTWARE LICENSING

1 Reserved.

2 Grant of License

- 2.1 In respect of any Contract for Software, we hereby grant Ordering Activity a non-assignable, non-sub-licensable, non-exclusive royalty-free license to use the Software and any Documentation provided under that Contract for their internal business purposes.
- 2.2 Ordering Activity authorized usage of the Software is set out in the agreed Order, including without limitation the number of End Users permitted to use the Software, whether their Affiliates are permitted to use the Software, the Licensed Territory, License Parameters and Licensed Purpose (if applicable).
- 2.3 Ordering Activity shall inform us promptly, and in any event within fourteen (14) days, if their usage of the Software exceeds that authorized in the agreed Order.

3 Reserved.

4 Delivery and Installation

We shall deliver the Software and Documentation to Ordering Activity by making it available for downloading on the Contract Commencement Date or as soon possible thereafter.

5 License Conditions

- 5.1 The Software may only be used in conjunction with the Approved Equipment and in accordance with the Documentation.
- 5.2 Unless we have expressly agreed otherwise, Ordering Activity is responsible for supplying and supporting the Approved Equipment and any user or database software and hardware which may be required for Ordering Activity to use the Software.
- 5.3 Ordering Activity's right to use the Software licensed under this Agreement and any Contract does not permit them:
- 5.3.1 to distribute or resell the Software; or
 - 5.3.2 to use the Software to provide outsourcing or bureau services for any third party.
- 5.4 Except to the extent such activities are expressly permitted by the law governing the Contract or are expressly agreed by the parties in the Contract, Ordering Activity shall not:
- 5.4.1 use the Software for any purpose other than as expressly permitted by an applicable Order;
 - 5.4.2 translate, adapt, disassemble, reverse engineer or decompile the Software or any part of it, nor arrange or create derivative works based on the Software;
 - 5.4.3 make any modifications, additions or enhancements to the Software other than configurations which are permitted using the Software's in-built functionality in accordance with its Documentation;
 - 5.4.4 permit the Software or any part of it to be combined or merged with or become incorporated in any other program;
 - 5.4.5 license, sell or otherwise deal in or encumber the Software; or
 - 5.4.6 use the Software on behalf of or make it available to any third party or allow or permit a third party to do so.
- 5.5 Ordering Activity may permit a third party to host and/or operate the Software on their behalf in connection with a disaster recovery, outsourcing or facilities management arrangement in accordance with the terms of an applicable Order provided that:
- 5.5.1 we have given Ordering Activity prior written approval to the identity of the third party;
 - 5.5.2 the Software and Documentation remains under their control;
 - 5.5.3 there is no novation or assignment of the Contract in favor of the third party; and
 - 5.5.4 Ordering Activity shall ensure that the third party complies with the terms of the Contract and Ordering Activity shall be responsible for the acts and omissions of the third party as if they were their acts and omissions.

6 Modifying or Copying the Software and Documentation

- 6.1 Subject to clause 6.2 below, Ordering Activity shall not copy or reproduce the Software or Documentation by any means or in any form without our prior written consent.
- 6.2 Ordering Activity may copy the Software in machine-readable form for testing and backup purposes (provided that any backup copies are not used in a hot or warm standby environment) and may make a reasonable number of copies of the Documentation as necessary for their authorized use of the Software.
- 6.3 All copies of the Software and Documentation made by Ordering Activity will include any copyright and confidentiality and other property notices included by us in the Software and Documentation and must remain under their direct control at all times.

7 Security

- 7.1 Ordering Activity shall ensure that the Software and Documentation is protected at all times from misuse, damage, destruction or any form of use not permitted under the relevant Contract.
- 7.2 Ordering Activity shall keep accurate records of use, copying, modification and disclosure of the Software and Documentation. If we request, Ordering Activity shall provide us with a copy of such records.

8 Warranty

- 8.1 We warrant that as at the date of delivery to Ordering Activity the Software will materially conform to its Documentation provided it is used in accordance with the terms and conditions of the GSA Schedule Contract and an applicable Order. For the purposes of this clause 8.1 the term "Software" shall not include any Third Party Software.
- 8.2 We do not warrant that the Software will be error free or operate without interruption or that it will operate in conjunction with any other hardware or software.
- 8.3 It is Ordering Activity's responsibility to ensure that the facilities and functions of the Software described in the Documentation meet their requirements and as such we do not warrant that the Software is fit for purpose.
- 8.4 We shall not be under any obligation to remedy any problem arising from or caused by:
- 8.4.1 any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software by anyone other than us without our express prior written consent other than configurations which are permitted using the Software's in-built functionality in accordance with its Documentation; or
 - 8.4.2 fault in any equipment or software (including Third Party Software) used in connection with the Software.

- 8.5 Reserved.
- 8.6 Ordering Activity shall take all reasonable precautions against the possibility that the Software or any component of it does not function properly, for example by making regular back-ups of their data and maintaining appropriate procedures for the retention of source documents for the reconstruction of lost or altered files or data.
- 9 Support and Maintenance**
- 9.1 Ordering Activity will not be entitled to any Updates or Releases for any Software unless Ordering Activity are purchasing Support and Maintenance Services from us for such Software.
- 9.2 Ordering Activity is not permitted to engage or authorize anyone other than us to provide any maintenance or support services for the Software.
- 10 Reserved.**
- 11 Reserved.**
- 12 Reserved.**
- 13 Reserved.**

SCHEDULE 3 - SUPPORT AND MAINTENANCE SERVICES

1. Reserved.

2. Reserved,

3. Service Description

3.1 The Support and Maintenance Services shall comprise of the following services:

Service	Description
Service Desk	We shall provide a service desk which shall be Ordering Activity's single point of contact for all Technical Support requests as well as for making general enquiries about the Software. The Service Desk may be contacted via the Wynyard Support Portal, by email at support@wynyardgroup.com or by phone (using the toll-free number set out in the relevant agreed Order or as otherwise notified by us from time to time). Outside of Normal Support Hours all Technical Support requests must be made via the Wynyard Support Portal.
Wynyard Support Portal	We shall provide Ordering Activity with access to our online portal where Ordering Activity can contact the Service Desk to request Technical Support.
Ordering Activity Self-Service Portal	For certain Software, we shall provide Ordering Activity with access to a self-service portal containing resources to assist Ordering Activity with their use of the Software.
Technical Support	Where Ordering Activity report a reproducible fault in the Software which prevents it from performing substantially in accordance with the Documentation to our Service Desk (each an "Incident") we shall use our commercially reasonable efforts to repair the Software and/or provide Ordering Activity with a workaround solution in accordance with the terms of this Appendix. Unless expressly agreed otherwise, we shall respond to Technical Support requests during the following hours: - For 'High' priority Incidents (as defined below), on a 24 hour, 364 day basis (i.e. every day except 25th December); - For 'Medium' and 'Low' priority Incidents (as defined below) during Normal Support Hours.
Releases and Updates	We shall provide Ordering Activity with Updates and Releases from time to time. We reserve the right at all times to determine what is included and excluded in any Releases or Updates.
Documentation Updates	We shall provide Ordering Activity with updates to our Documentation from time to time.

3.2 Each Incident reported by Ordering Activity to our Service Desk will be assigned a priority by us as follows:

Priority Level	Description
High	An Incident that renders the Software inoperable or substantially degrades the performance of the Software adversely impacting their business operations, or where the damage caused by a 'Medium' priority Incident is increasing rapidly and is likely to become a 'High' priority incident if not dealt with urgently.
Medium	An Incident that is not adversely affecting their business operations, but is repeatedly impacting their usage of the Software or degrading performance of the Software or where the damage caused by a 'Low' priority Incident is considerably increasing over time and therefore is likely to become 'Medium' or 'High' priority if not dealt with in the next few days.
Low	An Incident that has little or no impact on their business operations or any other Incident which does not fall into the above categories.

3.3 Action Timetable for Incident management:

- 3.3.1 The table below sets out our obligations when we receive a Technical Support request from Ordering Activity.
- 3.3.2 The 'Response Time' is the time between the Incident being reported to our Service Desk by Ordering Activity and an acknowledgement from us to Ordering Activity that the report has been received, the description of the problem has been understood and an investigation scheduled.
- 3.3.3 The 'Resolution Time' is the target time, commencing from the time when we respond to their Incident report in accordance with clause 3.3.2, within which we will endeavor to identify a permanent solution to the problem or establish a workaround or other temporary solution. If we establish a workaround or temporary solution, we will endeavor to provide a permanent solution in the next Release if the testing phase for that Release has not already commenced before the solution is identified.
- 3.3.4 The 'Progress Update Frequency' is the frequency when we will update Ordering Activity on our efforts to resolve the Incident.

Priority Level	Response Time	Resolution Time	Progress Update Frequency
High	4 hours	24 hours	daily
Medium	2 Business Days	5 Business Days	weekly
Low	5 Business Days	as mutually agreed	as mutually agreed

3.4 Whilst Ordering Activity are receiving Support and Maintenance Services from us Ordering Activity shall ensure that their

representatives co-operate fully with our Personnel in the diagnosis and remediation of any error or defect in the Software, which may include without limitation, providing connectivity for testing and diagnostic purposes, allowing us to view their computer system using an internet based service such as WebEx and allowing us to undertake remote control of desktops in accordance with applicable agency security requirements.

- 3.5 Where we provide an Update or Release to Ordering Activity, we strongly advise that Ordering Activity implement it on a test environment before putting it into live use. Ordering Activity test environment should be a mirror of their production environment. We shall not be liable for any loss or damage caused by a defect in any Update or Release which ought to have been discovered had it been subject to reasonable levels of testing by Ordering Activity on a mirror environment prior to being used in their live production environment.

4. **Limitations of Support and Maintenance Services**

- 4.1 Support and Maintenance Services will only be provided in relation to the latest Major Release and previous Major Release of the Software.
- 4.2 The following services are not provided as part of Support and Maintenance Services and if provided by us during the course of any Order shall require a separate written Order:
 - 4.2.1 support or maintenance of software, hardware or equipment not supplied by us;
 - 4.2.2 support or maintenance for any modification or enhancement to the Software not made by us or which has been developed by us specifically for Ordering Activity under a Contract for Professional Services and which does not become part of a generally available Update or Release for our other customers;
 - 4.2.3 customization or configuration of any Software;
 - 4.2.4 attendance on site by any support consultant;
 - 4.2.5 assistance with installing the Software (including any Updates or Releases);
 - 4.2.6 functional or technical training relating to the Software;
 - 4.2.7 diagnosis and/or rectification of problems caused by:
 - 4.2.7.1 use of the Software not in accordance with its Documentation, including, without limitation problems caused by the Software being used in conjunction with equipment or software that is not Approved Equipment;
 - 4.2.7.2 use of the Software not in accordance with the relevant solution design document for that Software including, without limitation, problems caused by the Software ingesting data which is not of the type and/or format set out in the solution design document;
 - 4.2.7.3 use of the Software not authorized under the relevant Order; or
 - 4.2.7.4 anything external to the Software including, without limitation, issues relating to the quality of their data or a failure in their file transfer mechanism.

For the avoidance of doubt the above list is not intended to be an exhaustive list of what is outside the scope of Support and Maintenance Services.

5. **Reserved.**

6. **Reserved.**

SCHEDULE 4 – PROFESSIONAL SERVICES

- 1 **Reserved.**
- 2 **Reserved.**
- 3 **Reserved.**
- 4 **Reserved.**
- 5 **Reserved.**
- 6 **Reserved.**
- 7 **Ordering Activity Obligations**
 - 7.1 Ordering Activity acknowledges that we will enter into Orders on the basis that Assumptions provided in an applicable Statement of Work (SOW) are correct.
 - 7.2 We shall not be liable to Ordering Activity for any Losses or other claims for compensation to the extent they are due to:
 - 7.2.1 **any negligence by Ordering Activity or their Representatives;**
 - 7.2.2 **any failure by Ordering Activity or their Representatives to meet their obligations under any Order; or**
 - 7.2.3 **any misuse by Ordering Activity or their Representatives of any Deliverables.**
 - 7.3 **Ordering Activity** shall procure that their Representatives
 - 7.3.1 are aware of the obligations or restrictions imposed on them under each Order; and
 - 7.3.2 shall use their reasonable efforts to ensure that they comply with the provisions of and each Order.
- 8 **Proprietary rights**
 - 8.1 The Intellectual Proprietary Rights and all other proprietary rights in Our Materials together with any materials developed by us under any Contract will remain vested in us in accordance with clauses 7.1 and 7.2 of the Conditions.
 - 8.2 We hereby grant to you a non-exclusive, non-transferable license to use the Deliverables for your internal business purposes only. Software configurations are subject to the applicable licensing terms under the relevant Contract under which the Software is licensed.
 - 8.3 Where any reference is made in a Deliverable to your Confidential Information we shall not use or disclose such Confidential Information other than as permitted under clause 6 of the Conditions.
- 9 **Reserved.**
- 10 **Warranties**
 - 10.1 We warrant that all Personnel engaged in the provision of Professional Services will have appropriate qualifications, training and experience and that we will provide the Professional Services in accordance with Good Industry Practice.
 - 10.2 We shall use all reasonable efforts to remedy free of charge any faulty work which is reported to us in writing, provided that such report is made within ninety (90) days of the performance of the relevant Professional Services. If we rectify such faulty work by the provision at our option of replacement or additional materials or services within a reasonable period of time, then we will have no other liability of any kind in respect of or arising from such faulty work.
- 11 **Reserved.**

SCHEDULE 5 – HOSTING SERVICES

1 Reserved.

2 Hosting Services Specification

2.1 Following the Go-Live Date, Hosting Services shall consist of the following services:

2.1.1 application hosting of the Hosted Software in the Hosting Environment; and

2.1.2 Hosting Services Support.

2.2 The Hosting Environment will:

2.2.1 be accessible via the Internet;

2.2.2 have sufficient capacity to support the maximum number of Concurrent Services Users using the Hosted Software at any one time;

2.2.3 have suitable processing capacity up to the maximum database size set out in the relevant Order; and

2.2.4 be built and maintained in accordance with Good Industry Practice.

2.3 We will:

2.3.1 maintain the security of the Hosting Services;

2.3.2 make regular backups of Customer Data and Hosted Software configurations;

2.3.3 monitor the availability and performance of the Hosting Services; and

2.3.4 install and maintain anti-virus software on the Hosting Environment;

in accordance with Good Industry Practice.

3 Reserved.

4 Reserved.

5 Ordering Activity Data

5.1 If requested by Ordering Activity, we shall provide Ordering Activity with a copy of any Customer Data in our possession on suitable storage media, subject to Ordering Activity paying:

5.1.1 all Charges due under the relevant Order;

6 Ordering Activity Obligations

6.1 Ordering Activity is responsible for providing access over the Internet between their users and the Hosting Environment in accordance with any requirements stipulated by us.

6.2 Ordering Activity shall ensure that their systems comply with any pre-requisites notified by us for accessing and running the Hosted Software.

7 Hosting Services Support and Regular/Scheduled Maintenance

7.1 Hosting Services Support shall consist of the following services:

Service	Description
Service Desk	The Service Desk described in Appendix 1 of Schedule 2 shall also be their point of contact for all Technical Support requests as well as for making general enquiries about the Hosting Services. Outside of Normal Support Hours all Technical Support requests must be made via the Wynyard Support Portal.
Wynyard Support Portal	Ordering Activity may also use the Wynyard Support Portal described in Appendix 1 of Schedule 2 to contact the Service Desk to request Technical Support in relation to the Hosting Services.
Technical Support	Where Ordering Activity reports a fault in the Hosting Environment which prevents the Hosting Services from performing substantially in accordance with the terms of this Schedule (an "Incident" for the purposes of Technical Support in relation to Hosting Services), we shall use our commercially reasonable efforts to repair the Hosting Environment and/or provide them with a workaround solution in accordance with the terms of this Schedule 5. The priority level definitions set out in Appendix 1 of Schedule 2 shall apply to Incidents reported in relation to the Hosting Services with the word "Software" replaced with "Hosting Services". Unless expressly agreed otherwise, we shall respond to Technical Support requests in relation to Hosting Services during the following hours: - for 'High' priority Incidents, on a 24 hour, 364 day basis (i.e. every day except 25th December); and - for 'Medium' and 'Low' priority Incidents, during Normal Support Hours.

- 7.2 We shall use our commercially reasonable efforts to resolve any faults relating to the Hosting Services that Ordering Activity reports to us, however Ordering Activity's remedy for any failure or defects in the Hosting Environment or Hosting Services shall be in accordance with clause 10 below. Faults in the Hosted Software shall be dealt with in accordance with the Support and Maintenance Services terms under the Software License.
- 7.3 We will provide regular maintenance of the Hosting Environment during the Maintenance Window each week. During the Maintenance Window all Hosting Services may become unavailable without any further warning to Ordering Activity. We will use reasonable efforts to give Ordering Activity not less than 24 hours' warning of any Scheduled Maintenance of the Hosting Environment by emailing their nominated contact person set out in the 'Services Contact' section of the relevant agreed Order. We will use reasonable efforts to schedule the Maintenance Window and Scheduled Maintenance in consultation with Ordering Activity so as to cause the least possible impact to them.
- 8 Hosting Services Limitations**
- 8.1 Ordering Activity acknowledges that the Hosting Services are subject to the limitations set out in the relevant agreed Order, including without limitation the maximum number of Concurrent Hosting Services Users and the size of the database that may be stored on the Hosting Environment. Ordering Activity acknowledges that we shall not be obliged to provide Hosting Services, including Hosting Services Support, where their use of the Hosting Services exceeds such limitations.
- 8.2 We do not promise that the Hosting Services will be uninterrupted, error-free, or completely secure. Ordering Activity acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Confidential Information. Our obligations in relation to data security are solely to provide Hosting Services which meet the requirements as set out in clause 2 above. We shall have no other responsibility or obligation to Ordering Activity in respect of the security of their data.
- 8.3 We shall not be liable for any Losses which Ordering Activity incurs as a result of any fault in or other problems associated with, the Internet or any equipment, hardware or software Ordering Activity uses to access the Internet.
- 9 Reserved.**
- 10 Availability**
- 10.1 The Hosting Services will be available at least 99.7% of the time, excluding any Excused Causes, as calculated in accordance with clause 10.2 below.
- 10.2 The availability percentage will be calculated per Quarter at the end of each Quarter, as follows:
- $$\text{Availability \%} = \frac{(x - y - z)}{(x - z)} \times 100$$
- where x = the total number of Service Periods since the beginning of the Quarter to the end of the Quarter being measured;
 where y = the total number of Service Periods where the Hosting Services were Unavailable in the Quarter not due to Excused Causes; and
 where z = the total number of Service Periods where the Hosting Services were Unavailable in the Quarter due to Excused Causes.
- 10.3 If we fail to make the Hosting Services available in accordance with the minimum percentage set out in clause 10.1 in a Quarter, we shall pay Ordering Activity service credits equivalent to one full day of Hosting Services Fees for each full hour that the Hosting Services are Unavailable below such percentage, calculated on a cumulative basis. In no case shall the total service credits for any Quarter exceed 10% of the Hosting Services Fees paid by Ordering Activity for such Quarter. If the availability percentage calculated in accordance with clause 10.2 above falls below 95% in two consecutive Quarters, Ordering Activity may, in lieu of receiving the above-described service credits for the second Quarter, terminate the Hosting Services by providing not less than thirty (30) days' notice of termination, in which case we will refund to Ordering Activity any prepaid fees for Hosting Services that were to be provided following the date of termination. .

X1 Discovery, Inc.
130 W Union Street
Pasadena, CA 91103

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **X1 Discovery, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - aa) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

X1 Discovery, INC.

X1 Discovery, INC. LICENSE, WARRANTY AND SUPPORT TERMS

These terms correspond to the X1D Search 8 software product ("Software").

1. License. Subject to Ordering Activity compliance with the terms and conditions of this License and payment of any applicable license fees, Contractor grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to download, install and use a single copy of the Software: (i.) on one primary computer, and (ii.) on one other computer used primarily by Ordering Activity (e.g., a portable computer), provided that the Software is not in concurrent use on more than one device at all times. "Software" includes object code form of the software program, accompanying documentation, related components provided with the Software, and any updates and maintenance releases provided to Ordering Activity. Ordering Activity shall not use the Software to provide any service bureau, rental service, subscription service, litigation support or other consulting service where Ordering Activity sell output or results from the Software. Ordering Activity understand that the Software is not designed to preserve data as evidence for court purposes or data retention and X1P expressly disclaims any liability for data loss or alteration. This Software is licensed, not sold, and Contractor grants Ordering Activity only the specific rights expressly set forth in this paragraph. Contractor reserves all other rights.
2. Restrictions. Ordering Activity agree not to (i) alter any copyright, trademark, patent, or other proprietary legends on or in the Software; (ii) decompile, reverse engineer, disassemble or otherwise reproduce the Software, or modify or create derivative works based on the Software; (iii) publish, rent, lease, sublicense, distribute, transfer or assign the Software; (iv) use the Software in any manner that could damage, disable, burden, or impair Contractor's servers; or (v) merge the Software into another program. The Software may contain software licensed from third parties ("Licensed Software") and Ordering Activity may not access any Licensed Software made available in connection with or through the Software (e.g., an integrated file viewer) without the presence and execution of the Software. Ordering Activity agree that the owners of such Licensed Software may enforce their rights against Ordering Activity directly in their own name.
3. Support. The terms of this License will also govern all updates or upgrades provided by Contractor through X1D which replace or supplement the Software, unless such update or upgrade is accompanied by a separate license, in which case the terms of that license will govern. Ordering Activity are not entitled to any updates, enhancements, upgrades or modifications to the Software or any support or maintenance services unless Ordering Activity have entered into an agreement for such support or maintenance services and are in good standing under such agreement. Contractor does not guarantee that any future updates or upgrades of Software will be made available to Ordering Activity or will be available free of charge. Additionally, Contractor may automatically download and install updates or other changes to the Software. Without limiting the generality of the foregoing, Contractor may cease offering support of any kind pertaining to the usage of older releases of Software whenever a new release, whether for free or for pay, of Software becomes available.
4. Third Party Services. Contractor through X1D may enable access to third party software, services, content and web sites (collectively, "Third Party Services") from within or through the Software. Ordering Activity acknowledge and agree that Contractor nor X1D is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Services. Use of the Third Party Services may require Internet access, subscription to a service, and acceptance of terms for such Third Party Services. To the extent Ordering Activity choose to access such Third Party Services, Ordering Activity are responsible for compliance with all fees, terms of service and all applicable laws with respect to such Third Party Services. Ordering Activity hereby waive any legal claim Ordering Activity might have against Contractor with respect to such Third Party Services.
5. Changes. X1D products and services are constantly evolving and Contractor may change or discontinue the Software or impose new or additional rules, policies, terms or conditions on Ordering Activity's use of the Software and all or part of the terms of this License, without notice or liability to Ordering Activity. ORDERING ACTIVITY'S CONTINUED USE OF THE SOFTWARE FOLLOWING CONTRACTOR THROUGH X1D'S POSTING OF ANY CHANGED TERMS WILL CONSTITUTE ORDERING ACTIVITY'S ACCEPTANCE OF THE CHANGED TERMS.
6. Termination. This License is effective until terminated. Ordering Activity may terminate this License at any time. If Ordering Activity licensed the Software under a term license, the License shall terminate upon the expiration of the stated license term. Upon termination, Ordering Activity must uninstall, remove, and delete all copies and installations of the Software.
7. Data Collection and Privacy. Use of the Software is subject to our Privacy Policy.

INFORMATION COLLECTED

Automatic Collection: Like most other websites, we use common internet technologies such as cookies and Web beacons to keep track of users' interactions with the Site and the Services. This may include your internet protocol (IP) address, Referring website addresses, browser type and access times and mobile carrier or internet access provider.

Volunteered: If you register with us, subscribe to or use downloadable software or web-based applications, fill out a profile page, purchase products or services, send us an email, or share personal information with us in any other way, we will collect and store whatever information you share. This obviously depends on what information you choose to provide but it may include your name, email address, credit card information or other billing information. The collection of this information is part of regular business practices and is necessary in order to complete transactions and properly run and administer these services. You do not have to share this information with us, but without it you may not be able to access certain content or features or participate in certain areas of the Site.

Publicly Posted: If you post information on public areas of the Site (or elsewhere on the internet) that information may be collected, stored and used by anyone, including us. We strongly recommend that you do not post any information that allows strangers to identify or locate you. Posting such information may result in unsolicited messages or contact from others, to say the least.

Installation Numbers. X1 software products may use a system of authentication and identification during installation of the software and on an ongoing basis to confirm that the user of the X1 software products is an authorized licensee. This phone home functionality is used to authenticate the server or device utilizing the X1 Services.

Support. X1 Services do not transmit results of any searches conducted by the user back to X1. To be clear, your case related information or other content is not provided back to X1. However, if you experience an error, the X1 Services will send log information to X1 for service and support purposes and such log data may include information about a user's profile, computer or device, and search history.

Credit Card Security. Providing you with a secure ordering experience is a high priority. When you submit an order through the Site, the order information is encrypted when it is transmitted for credit card processing to X1 (and its credit card services provider).

Encryption is a process by which we use software to scramble information in transit. The Site is also registered with site identification authorities to enable your browser to confirm X1's identity before any transmission is sent. The identity of our site is automatically confirmed behind the scenes prior to the transmission of any customer information requested to complete an online order so that your data reaches your intended target. When confirming an order to you by email, we reveal only the last four digits of your credit card numbers. Of course, we transmit the entire credit card number to the appropriate credit card company during order processing.

HOW DO WE USE THE INFORMATION WE COLLECT

We use this information to provide you with better service. It also helps our advertisers and partners provide you with more relevant offers, which in turn helps cover the cost of our services to you. Among other things, the information we collect enables X1 to: customize the content you see fulfill your requests for products and services and validate your user rights improve services contact and communicate with you conduct research and analysis provide anonymous reporting for internal and external clients provide you with additional information we think is of interest to you.

WHEN DO WE SHARE OR DISCLOSE YOUR INFORMATION?

Anonymous Information. Anonymous information is information that does not identify you personally, like your IP address and Referring website addresses. We may share anonymous information with others, such as advertisers, sponsors and business partners.

All Information (Both Anonymous and Personally Identifiable). In certain circumstances, we may share information we have collected, including personally identifiable information. For example:

We might share your personally identifiable information during due diligence or in preparation for or after a sale, merger, consolidation, change in control, transfer of substantial assets, reorganization or liquidation.

If you give us permission, we may share your personally identifiable information with third parties who might send you marketing and promotional information.

Your personal information may be transferred to anyone who is helping us make the Site and Services available and functional, like technical agents, payment processing vendors, other subcontractors, and our affiliates and consultants.

As in any transaction, if you provide your credit card information to us for purchases, your credit card company will be provided with all relevant information about us, item(s) purchased, cost and other information necessary to process the transaction.

We may disclose your personal information if permitted or required by law or is necessary to comply with the law enforcement or in response to a search warrant, subpoena or other legal process or where we believe such action is necessary in order to protect or defend our interests or the interests of our users or business partners.

CHILDREN UNDER 13

The Site is not intended for children under age 13, or for anyone under age 18 without involvement of a parent or guardian. The Site includes unmonitored content posted by users and sourced from other third parties and as you can imagine, such content may be unsuitable for children. We do not knowingly collect or distribute information from or about children under 13.

THIRD PARTIES

Like most other websites, we may engage third parties to directly gather non-personally identifiable information from users of the Site through automated means such as cookies. For example, we may engage a third party to help us track and analyze anonymous information from users who visit the Site or use the Services. This Privacy Policy does not cover how third parties use cookies or other technologies or any information they gather through such technologies.

The Sites and Services may contain links to websites or other properties and content operated by third parties over which X1 has no control. Their privacy policies may be different from our Privacy Policy, and you access such linked websites or third-party content at your own risk.

SECURITY

Information that X1 collects is stored on servers that X1 manages, using standard security procedures and practices appropriate to the nature of the information. Please be aware that no data transmission over the Internet can be guaranteed to be 100% secure. As a result, X1 cannot guarantee or warrant the security of any information you transmit on or through the Sites or Services and you do so at your own risk.

FOREIGN COUNTRIES

Your personal information may be transferred to and maintained on servers or databases located outside your state or country or to a jurisdiction where the privacy laws may not be as protective as those in your location. If you are located outside of the United States, please be advised that X1 processes and stores information in the United States and your use of our Site or Services constitutes your consent to and understanding of this processing.

CHANGES TO PRIVACY POLICY

X1 reserves the right to change this Privacy Policy at any time, and will do so by posting changes to this Privacy Policy on the Site.

8. **DISCLAIMER OF WARRANTY.** THE SOFTWARE IS PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER.

CONTRACTOR EXPRESSLY DISCLAIMS ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. CONTRACTOR DISCLAIMS ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE. ORDERING ACTIVITY UNDERSTAND AND AGREE THAT ORDERING ACTIVITY DOWNLOAD, INSTALL, AND/OR USE THE SOFTWARE AT ORDERING ACTIVITYR OWN DISCRETION AND RISK AND THAT ORDERING ACTIVITY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ORDERING ACTIVITYR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE. CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM ORDERING ACTIVITYR DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE.

9. RESERVED.

10. Ordering Activity CONTRACTOR

11. Export Control; Government End Users. The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software, which may include restrictions on destinations, end users and usage. If the Software is supplied to or on behalf of the United States Government, then the Software is deemed to be "commercial software" as that term is used in the Federal Acquisition Regulation system. Rights of the United States shall not exceed the minimum rights set forth in FAR 52.227-19 for "restricted computer software." All other terms and conditions of this License apply.

12. Reserved.

13. Reserved.

14. Miscellaneous.

Changes. We are constantly developing our Site and Services. This means that we may change or discontinue either or both without notice or liability to you. In addition, we may change all or part of the Agreement at any time, including these terms. We may make changes by posting the changed terms on the Site. YOUR CONTINUED USE OF THE SITE AND/OR OUR SERVICES WILL CONSTITUTE ACCEPTANCE OF THE CHANGED TERMS.

Third Party Content and Links. Contractor through X1 provides Services that allow you to view content on third party services. X1 is not a content provider and does not control the content or websites of such third party services. You acknowledge and agree that any third-party products or services are not the responsibility of Contractor or X1 and are subject to the terms of such third-party at its sole discretion. Furthermore, you acknowledge and agree that nothing herein is a grant of license to (i) the third-party products or services; (ii) any products, processes or technology described in or offered by the third-party products or services; or (iii) any copyright, trademark, patent or other intellectual property right in the third-party products or services. We disclaim any responsibility for any harm resulting with respect to viewing or using of any third-party content or third-party products or services.

Things You Cannot Do.

Give false or misleading information to us or anyone else in connection with your use of the Site or the Services, including giving false information in your account registration. You are entirely responsible for all content that you upload, post or otherwise transmit via the Site.

Upload, post or otherwise transmit via the Site any content that: (i) is harmful, obscene, indecent, pornographic, defamatory, racist, violent, offensive, threatening, harassing, or otherwise objectionable to Evolution or other users of the Site; (ii) includes unauthorized disclosure of personal information; (iii) violates or infringes anyone's intellectual property rights; or (iv) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. X1 reserves the right to edit or remove content that violates this Agreement.

Do anything that smacks of bad online citizenship, such as use our Services for spam or attempt to reverse engineer or hack into our systems.

Access or scrape the Site or the Services by any automated means unless you are a search engine crawling the Site for the sole purpose of creating a publicly accessible search index; or bypass any technical protections or throttling that we institute.

Copy, modify, create derivative works from or distribute any content from the Site (whether the content has been posted by us or a third party); copy, display or use our trademarks in any way; or use the Site for any purpose not explicitly authorized in the Agreement.

Link to the Site using any HTML techniques that display the Site within a frame, partial window, popup, pop-under, or any other non-standard linking method, or present or redistribute content from the Services, except as provided authorized by X1.

Anything we ask you not to do.

Third Party Applications. Contractor through X1 may offer its Services utilizing application program interfaces available from other third party providers ("API"). Such APIs may also offer to display content provided by other third-party party products and services (a) through APIs, "feeds" or other mechanisms provided by such third-party party products and services, or (b) by accessing your

accounts with such third-party products and services as authorized by you during your use of the Services ("User Content"). As to User Content we access through the APIs, you hereby authorize X1 to access your account for the purpose of obtaining and using such User Content. The use of such APIs made available by third parties is subject to the terms and conditions provided by those providers for application developers such as X1. We make no representations or warranties regarding the performance of such third-party services, their compliance with applicable laws and regulations, or any other aspect of such third-party services. Your use of third-party services is at your own risk. You acknowledge and agree that the third-party services and any related third-party terms of service are subject to change by the applicable third-party at its sole discretion and without any notice.

Third Party Trademarks and Content. Use of any third party trademark or third party content on the Site does not constitute affiliation with or endorsement of these third parties. Aside from any explicit grants in the Agreement, nothing in the Agreement grants you any license to third party trademarks or content. All trademarks are the property of their respective owners.

X1's Rights. X1 retains all right, title and interest in the Site and the Services, including all technology and processes, enhancements or modifications thereto, trademarks, service marks, logos, site design, text, graphics, logos, images and icons, as well as the arrangement thereof. You agree that the Services contain proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information, or materials in any way whatsoever except for permitted uses of the Services. Except for rights expressly granted in the Agreement, nothing in the Agreement grants you any right, title or license. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or licensee.

X1 PROVIDES THIS SITE AND THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED, OR STATUTORY. X1 SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NON-INFRINGEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THIS SITE AND SERVICES. X1 MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, NOR DOES X1 MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE OR THE SERVICES OR THAT ANY DEFECTS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM X1 SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. THIS DISCLAIMER IS MADE TO THE FULLEST EXTENT PERMITTED BY LAW. SOME STATES AND COUNTRIES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU.

Yubico Inc.
420 Florence Street, Suite 200
Palo Alto, CA 94301

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Yubico Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
 - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

YUBICO

YUBICO LICENSE, WARRANTY AND SUPPORT TERMS

The terms & conditions of this Attachment shall be incorporated into each contract between Yubico and Ordering Activity for the purchase and sale of the Product, and shall govern each such purchase and sale and the use of the Product and Service.

As used herein, "**Yubico**" means the Yubico entity, Yubico, Inc., that supplied the Product to Ordering Activity, "**Product**" means YubiKey or YubiHSM, as applicable, and "**Service**" means the YubiCloud one-time password validation service.

- A. Limited Warranty.** Yubico warrants that the Product will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to the original purchaser (the "**Warranty Period**"). If a defect in material or workmanship arises within the Product during the Warranty Period and the Product is returned to Yubico within the Warranty Period, Yubico will, at its sole option and subject to applicable laws: (a) repair or replace any defective Product with a new or refurbished product; or (b) refund the original purchase price of the Product. The Warranty Period for any repaired or replacement Product will persist for the longer of the remainder of the original one (1) year Warranty Period or ninety (90) days from the date the repaired or replacement product is shipped to the user. This Paragraph A sets forth Yubico's sole obligation and Ordering Activity's sole remedy for any breach of the Limited Warranty.
- B. Restrictions.** The Limited Warranty extends only to the original purchaser of the Product and is non-transferrable. The Limited Warranty does NOT apply to a Product that: (a) is altered or modified, other than by Yubico; (b) is not maintained in a normal and customary fashion or is operated outside of Yubico's recommended guidelines; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (d) has had its original serial number altered or removed, other than as a result of normal wear and tear; or (e) Yubico has provided free of charge. In no event does Yubico warrant that the Product is error free, will operate properly or at all in all computer environments and configurations, or that Ordering Activity will be able to operate the Product without problems or interruptions. Yubico does not warrant that the Product or any equipment, system or network on which the Product is used will be free of vulnerability to intrusion or attack.
- C. Grant of License.** The Product may contain certain object code software deployed onto its secure hardware prior to delivery to the user ("**Firmware**") and/or provided separately for use with the Product ("**Driver Code**") ("collectively, "**Software**"). Yubico grants Ordering Activity a personal, nonexclusive, non-sublicensable, non-assignable and non-transferable license to use the Software solely as part of Ordering Activity's use of the Product and in accordance with the terms and conditions of this

Attachment. Ordering Activity may use the Firmware only as originally deployed onto the Product. Ordering Activity may not separate the Firmware from the remainder of Product or use the Software on another device. Ordering Activity may not distribute, license, sell, rent, or otherwise provide the Software to third parties. Ordering Activity acknowledges that the Software may have bugs or security vulnerabilities and that in no event does Yubico warrant that the Software is error-free or that the Software or the Product as a whole is free of all possible security vulnerabilities.

D. Rights Protection. The Software is licensed not sold. All title to the Software and other Yubico intellectual property rights related to the Software such as, but not limited to, copyright, trade secrets, patents, trademarks and service marks, shall at all times remain with Yubico and its licensors as applicable. Ordering Activity agrees that the techniques, ideas, algorithms, design, concepts, code, and processes contained or enabled in the Product constitute Yubico's intellectual property rights and are subject to confidentiality protection. As such, Ordering Activity agrees not to reverse engineer, disassemble or decompile, or otherwise attempt to derive the source code for, or perform cryptographic analysis upon, the Product to the extent this restriction is permitted by law.

E. Compliance with Laws. In connection with the use and transport of the Product, including the Software, Ordering Activity shall comply with all applicable export, import, and other relevant laws. Determination of the applicable law is Ordering Activity's responsibility. Ordering Activity acknowledges and understand that the Product, including the Software, is cryptographic in nature and that it therefore is highly regulated. Ordering Activity is strictly prohibited from exporting, reexporting or importing the Product and/or Software, regardless of method, without first complying with all applicable government use, import, and export laws, rules, regulations, and orders, and obtaining any necessary approvals or permits. Obtaining any necessary export or import approval for the Product is Ordering Activity's responsibility.

F. Warranty Disclaimer. THE SERVICE IS PROVIDED FREE OF CHARGE AND "AS IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER. WITH RESPECT TO THE PRODUCT, INCLUDING THE SOFTWARE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESS LIMITED WARRANTY. ALL OTHER STATUTORY AND IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, ARE DISCLAIMED. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Ordering Activity. The Limited Warranty gives Ordering Activity specific legal rights, and Ordering Activity may also have other rights which vary by jurisdiction.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL YUBICO OR ITS AFFILIATES BE LIABLE FOR ANY LOST DATA OR UNAUTHORIZED ACCESS TO COMPUTER SYSTEMS, DATA OR OTHER INFORMATION.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, YUBICO PROVIDES THE PRODUCT "AS IS." BY USING THE PRODUCT, THE USER ASSUMES ALL RESPONSIBILITY FOR AND RISK OF USE OF THE PRODUCT. WITHOUT LIMITING THE SCOPE OF THE FOREGOING, YUBICO DOES NOT WARRANT THAT THE PRODUCT OR THE SERVICE WILL FUNCTION WITHOUT DEFECTS OR THAT THE PRODUCT OR THE SERVICE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL MECHANISMS OR THAT ALL PROGRAMMING ERRORS CAN BE FOUND IN ORDER TO BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND CONSISTENT WITH THIS ATTACHMENT, YUBICO DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, ERRORS, OMISSIONS, COMPLETENESS, OR USEFULNESS OF THE PRODUCT, THE SERVICE, AND ANY SOFTWARE, PROCEDURE, METHOD, APPARATUS, TECHNICAL SUPPORT OR PROCESS PROVIDED TO ORDERING ACTIVITY IN ASSOCIATION WITH THIS ATTACHMENT. YUBICO, ITS AFFILIATES, LICENSORS, EMPLOYEES, DISTRIBUTORS AND RESELLERS DO NOT ASSUME ANY RESPONSIBILITY FOR LOSS OR DAMAGES RESULTING FROM THE USE OF THE PRODUCT, THE SERVICE OR ANY INFORMATION CONTAINED IN ANY DOCUMENTATION PROVIDED TO USER.

THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.2124(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

Xirrus, Inc.
2101 Corporate Center Drive
Thousand Oaks, CA 91320

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. Scope. This Rider and the attached Xirrus, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

- a) **Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
- b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
- c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
- d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

- e) **Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.
- f) **Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- g) **Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.
- h) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.
- i) **Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.
- j) **Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

- k) **Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.
 - l) **Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.
 - m) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
 - n) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
 - o) **Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
 - p) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
 - q) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.
 - r) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
 - s) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

Attachment A - Xirrus Software License and Warranty Agreement

1.0 DEFINITIONS

- 1.1 "Documentation" means the user manuals and all other all documentation, instructions or other similar materials in whatever media or format as provided or made available by Xirrus accompanying or associated with the Software covering the installation, application, and use thereof.
- 1.2 "Licensor" means XIRRUS and its suppliers.
- 1.3 "Product" means an access point or high density access point containing one or more distinct radios.
- 1.4 "Software" means, collectively, each of the application and embedded software programs delivered to Ordering Activity in connection with this Agreement. For purposes of this Agreement, the term Software shall be deemed to include any and all Documentation and Updates provided with or for the Software.
- 1.5 "Updates" means any bug-fix, maintenance or version release to the Software that may be provided to Ordering Activity from Licensor pursuant to this Agreement or pursuant to any separate maintenance and support agreement entered into by and between Licensor and Ordering Activity.

2.0 GRANT OF RIGHTS

- 2.1 Software. Subject to the terms and conditions of this Agreement and the applicable ordering document (Purchase Order), together with the underlying GSA Schedule Contract and Schedule Pricelist, Licensor hereby grants to Ordering Activity a perpetual, non-exclusive, non-sublicenseable, non-transferable right and license to use the Software solely as installed on the Product in accordance with the accompanying Documentation and for no other purpose.
- 2.2 Ownership. The license granted under Sections 2.1 above with respect to the Software does not constitute a transfer or sale of Licensor's or its suppliers' ownership interest in or to the Software, which is solely licensed to Ordering Activity. The Software is protected by both national and international intellectual property laws and treaties. Except for the express licenses granted to the Software, Licensor and its suppliers retain all rights, title and interest in and to the Software, including (i) any and all trade secrets, copyrights, patents and other proprietary rights therein or thereto or (ii) any Marks (as defined in Section 2.3 below) used in connection therewith. In no event shall Ordering Activity remove, efface or otherwise obscure any Marks contained on or in the Software. All rights and licenses not expressly granted herein are reserved by Licensor.

2.3 Copies. Ordering Activity shall not make any copies of the Software but shall be permitted to make a reasonable number of copies of the related Documentation. Whenever Ordering Activity copies or reproduces all or any part of the Documentation, Ordering Activity shall reproduce all and not efface alter, or remove any titles, trademark symbols, copyright symbols and legends, and other proprietary markings or similar indicia of origin ("Marks") on or in the Documentation.

2.4 Restrictions. Ordering Activity shall not itself, or through any parent, subsidiary, affiliate, agent or other third party (i) sell, rent, lease, license or sublicense, assign or otherwise transfer the Software, or any of Ordering Activity's rights and obligations under this Agreement except as expressly permitted herein; (ii) decompile, disassemble, or reverse engineer the Software, in whole or in part; (iii) allow access to the Software by any user other than by Ordering Activity's employees and contractors who are bound in writing to confidentiality and non-use restrictions at least as protective as those set forth herein; (iv) except as expressly set forth herein, write or develop any derivative software or any other software program based upon the Software; (v) use any computer software or hardware which is designated to defeat any copy protection or other use limiting device, including any device intended to limit the number of users or devices accessing the Product; (vi) disclose information about the performance or operation of the Product or Software to any third party without the prior written consent of Licensor; or (vii) engage a third party to perform benchmark or functionality testing of the Product or Software.

3.0 LIMITED WARRANTY AND LIMITATION OF LIABILITY

3.1 Limited Warranty & Exclusions. Licensor warrants that the Software will perform in substantial accordance with the specifications therefore set forth in the Documentation for a period of ninety [90] days after Ordering Activity's acceptance of the terms of this Agreement with respect to the Software ("Warranty Period"). If during the Warranty Period the Software does not perform as warranted, Licensor shall, at its option, correct the relevant Product and/or Software giving rise to such breach of performance or replace such Product and/or Software free of charge. THE FOREGOING ARE ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF OR NONCOMPLIANCE WITH THE FOREGOING WARRANTY. THE WARRANTY SET FORTH ABOVE IS MADE TO AND FOR THE BENEFIT OF ORDERING ACTIVITY ONLY. The warranty will apply only if (i) the Software has been used at all times and in accordance with the instructions for use set forth in the Documentation and this Agreement; (ii) no modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor's authorized representative; and (iii) the Software or Product on which the Software is installed has not been subject to any unusual electrical charge.

3.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 3, ALL ADDITIONAL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, AGAINST INFRINGEMENT OF ANY FORM OR NATURE OF INTELLECTUAL PROPERTY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED BY LICENSOR AND ITS SUPPLIERS. THIS DISCLAIMER SHALL APPLY EVEN IF ANY EXPRESS WARRANTY AND LIMITED REMEDY OFFERED BY LICENSOR FAILS OF ITS ESSENTIAL PURPOSE.

3.4 HAZARDOUS APPLICATIONS. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF A NUCLEAR FACILITY, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROLS OR OTHER DEVICES OR SYSTEMS IN WHICH A MALFUNCTION OF THE SOFTWARE WOULD RESULT IN FORSEEABLE RISK OF INJURY OR DEATH TO THE OPERATOR OF THE DEVICE OR SYSTEM OR TO OTHERS ("HAZARDOUS APPLICATIONS"). ORDERING ACTIVITY ASSUMES ANY AND ALL RISKS, INJURIES, LOSSES, CLAIMS AND ANY OTHER LIABILITIES ARISING OUT OF THE USE OF THE SOFTWARE IN ANY HAZARDOUS APPLICATIONS.

THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

3.5 Reserved.

4.0 RESERVED

5.0 RESERVED

6. COMMERCIAL COMPUTER SOFTWARE

The Software and Documentation furnished and licensed under and pursuant to this Agreement are a "commercial item", and is "commercial computer software" and "commercial computer software documentation" as those terms are defined and used in applicable U.S. federal government and comparable U.S. department and agency acquisition statutes and regulations. If Ordering Activity is the U.S. government or a department or agency thereof, Ordering Activity shall only acquire the rights and licenses as are contained in this Agreement, unless otherwise expressly agreed to in writing by Licensor in a separate written addendum to this Agreement.

7. MISCELLANEOUS

During the course of use of the Software, Licensor may collect information on your use thereof; you hereby authorize Licensor to use such information to improve its products and services, and to disclose the same to third parties provided it does not contain any personally identifiable information. Ordering Activity may not export or re-export the Software or Documentation (or other materials) without appropriate United States government licenses or in violation of the United States' Export Administration Act and Ordering Activity shall comply with all national laws governing the Software.

LIMITED HARDWARE WARRANTY

Xirrus warrants that for the lifetime of the product (Xirrus Access Points) or a period of five years (Xirrus Arrays) or one year (all other Xirrus hardware products) from the date of purchase by the original purchaser ("Ordering Activity"): (i) the Xirrus Equipment ("Equipment") will be free of defects in materials and workmanship under normal use; and (ii) the Equipment substantially conforms to its published specifications. Except for the foregoing, the Equipment is provided AS IS. This limited warranty extends only to Ordering Activity as the original purchaser. Ordering Activity's exclusive remedy and the entire liability of Xirrus and its suppliers under this limited warranty will be, at Xirrus' option, repair, replacement, or refund of the Equipment if reported (or, upon request, returned) to the party supplying the Equipment to Ordering Activity. In no event does Xirrus warrant that the Equipment is error free or that Ordering Activity will be able to operate the Equipment without problems or interruptions.

This warranty does not apply if the Equipment (a) has been altered, except by Xirrus, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Xirrus, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra- hazardous activities.

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IN NO EVENT WILL XIRRUS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE EQUIPMENT EVEN IF XIRRUS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Ordering Activity agrees the Equipment and related documentation shall not be used in life support systems, human implantation, nuclear facilities or systems, or any other application where failure could lead to a loss of life or catastrophic property damage or cause or permit any third party to do any of the foregoing.

Equipment including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Ordering Activity agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Equipment.

ZeroFox, Inc.
1834 S Charles Street
Baltimore, MD 21224
Email: Jessie@zerofox.com

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached ZeroFox, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
 - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
ZeroFox, Inc.

ZeroFox, Inc. LICENSE, WARRANTY AND SUPPORT TERMS

1. ORDER FORMS.

Subject to the terms and conditions of this Agreement, ZeroFOX agrees to sell the Services that are identified in a mutually executed Purchase Order.

Upon mutual execution of the Purchase Order, this agreement shall be considered an integral part of this Agreement.

2. USE OF APPLICATION SERVICES.

2.1 Right to Use Application Services.

(a) ZeroFOX agrees to provide access to Application Services within the scope of the Access Rights purchased by Ordering Activity pursuant to a mutually executed Purchase Order. Ordering Activity acknowledges that the Access Rights may be used only by Ordering Activity's Authorized End Users for Ordering Activity's internal business purposes, and only during the Access Term.

(b) Ordering Activity acknowledges (i) that it is responsible for procuring and operating all computer systems, software, and telecommunications services required to meet the minimum technical specifications necessary for Ordering Activity's Authorized End Users to access and use the Application Services, and Ordering Activity may be unable to access or utilize some or all aspects of the Application Services unless such minimum technical specifications are met, and (ii) nothing in this Agreement may be interpreted as an implied license or to require ZeroFOX to deliver a copy of any software or other product utilized by ZeroFOX to provide the Application Services.

2.2 Authorized End Users. Ordering Activity shall be fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Application Services under its Authorized End User login credentials. Ordering Activity shall not authorize access to or permit use of the Application Services by persons other than Authorized End Users. ZeroFOX will issue to Ordering Activity the number of unique sets of login credentials (each consisting of a user name and password) set forth on the applicable Purchase Order for the Application Services and, unless otherwise approved in writing by ZeroFOX in its sole discretion, Ordering Activity will ensure that no more than one Authorized End User will have access to or will use each set of login credentials.

2.3 Documentation License. Subject to the terms and conditions of the Purchase Order, ZeroFOX hereby grants to Ordering Activity a nonexclusive, non-transferable, non-sublicenseable right and license during the Term to reproduce copies of the Documentation solely for use by Ordering Activity in connection with the exercise of rights granted in this Agreement. Ordering Activity acknowledges that no right is granted to distribute, publish, modify, adapt, translate or create derivative works of the Documentation. Ordering Activity acknowledges that the Documentation is ZeroFOX's Confidential Information, and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation. ZeroFOX recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

3. RESERVATION OF RIGHTS AND RESTRICTIONS.

3.1 Proprietary Rights; No Implied Licenses. Ordering Activity acknowledges that, as between the Parties, ZeroFOX owns all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Application Services, the ZeroFOX Products and Platform, and the Documentation. To be clear, however, the preceding sentence does not constitute a representation or warranty regarding ownership of any intellectual property rights or other proprietary interests.

3.2 Compliance with Laws. Ordering Activity represents and warrants that it shall use the Application Services and Reports only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing

authorities, including without limitation the National Labor Relations Act, the Family Medical Leave Act, the Stored Communications Act, the Computer Fraud and Abuse Act and any federal, state or local laws regarding employee privacy, off-duty conduct or discrimination.

3.3 General Restrictions on Use. Ordering Activity agrees not to act outside the scope of the rights that are expressly granted by ZeroFOX in this Agreement. Ordering Activity will not (a) make the Application Services available to anyone other than Ordering Activity and its Authorized End Users; (b) sell, resell, license, sublicense, rent, lease or distribute the Application Services or any Reports, or include any Application Services or Reports or any derivative works thereof in a service bureau or outsourcing offering; (c) copy, modify or make derivative works based upon the Application Services; (d) "frame" or "mirror" any Reports contained in, or accessible from, the Application Services on any other website, server, wireless or Internet-based device; or (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component underlying the Application Services is compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Ordering Activity any right to obtain or use such source code. Ordering Activity acknowledges and agrees that compliance with the restrictions set forth in this Article 3 is an essential basis of this Agreement.

4. TREATMENT OF CONTENT.

4.1 Selection of Ordering Activity Content and Third Party Content. Ordering Activity understands that the Application Services are capable of processing Ordering Activity Content that is uploaded by Ordering Activity to ZeroFOX's servers. Ordering Activity further understands that the Application Services may include features that enable Ordering Activity to specify Third Party Content to be retrieved via the Application Services automated functionality from a variety of third-party websites and other third-party resources, including Social Media Sites. As between the Parties, Ordering Activity alone is responsible for selection of all Ordering Activity Content and Third Party Content, and ZeroFOX disclaims all risks associated with the content, accuracy, completeness, consistency, integrity, legality, reliability and appropriateness of Ordering Activity Content and Third Party Content and the use of all such content by Ordering Activity and by ZeroFOX in connection with providing the Services contemplated by this Agreement as set forth on any mutually executed Order Form.

4.2 Rights in Content.

- (a) **Ordering Activity Content.** Ordering Activity hereby grants to ZeroFOX a non-exclusive license to use, store, process, analyze and display in Reports all Ordering Activity Content during the Term for the limited purposes of performing ZeroFOX's obligations under this Agreement. Prior to uploading Ordering Activity Content, Ordering Activity shall, at its own expense, obtain all licenses, consents or other permissions from appropriate third parties as may be necessary for Ordering Activity's use of the relevant Ordering Activity Content as necessary to enable Ordering Activity to grant the rights granted by this Section 4.2.
- (b) **Third Party Content.** Ordering Activity acknowledges that the Content may contain or be accompanied by third-party software, data or other materials that are subject to and provided in accordance with terms that are in addition to or different from the terms set forth in this Agreement.
- (c) **Employee Generated Content.** Ordering Activity acknowledges that Ordering Activity Content and Third Party Content may include content generated by its employees and that Ordering Activity's collection, monitoring and use of such content may be restricted by federal and state employment laws. Ordering Activity shall, at its own expense, obtain all consents or permissions required to lawfully use employee-generated content as contemplated by this Agreement and Ordering Activity shall only use such content in compliance with applicable law.

4.3. Content Disclaimers.

- (a) ZeroFOX shall have no obligation to preview, verify, modify, filter or remove any Third Party Content (although ZeroFOX may do so in at its sole discretion), and ZeroFOX shall not be responsible for any failure to remove, or for any delay in removing, harmful, inaccurate, unlawful or otherwise objectionable Third Party Content.
- (b) Ordering Activity acknowledges that, as between the Parties, Ordering Activity is responsible for backup and archiving of any content processed by the Application Services, including all Ordering Activity Content and Third Party Content. ZeroFOX shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Content or Third Party Content.
- (c) Ordering Activity acknowledges that, in the event the relevant third party provider of any particular Third Party Content ceases to make the same available for use as contemplated in this Agreement on terms acceptable to ZeroFOX, ZeroFOX shall have the right to discontinue provision of any tools to retrieve or access such Third Party Content, and/or may discontinue the processing, analysis, storage or provision of access to any such Third Party Content, without thereby entitling Ordering Activity to any refund, credit, or other compensation, other than a refund of the unearned portion of any fee that was paid to ZeroFOX, if any, for actually supplying the access to such Third Party Content.
- (d) ZeroFOX does not provide any warranty or support under this Agreement for any non-ZeroFOX products or services, including without limitation, Ordering Activity Content and/or Third Party Content.

4.4 Appointment as Agent. Ordering Activity acknowledges and agrees that in order to provide certain features of the Application Services, ZeroFOX may need to access and collect certain information from Social Media Sites on Ordering Activity's behalf and contact the owners of such sites for social risk management matters. As such, during the Access Term, Ordering Activity hereby appoints ZeroFOX as Ordering Activity's agent to act on Ordering Activity's behalf with regards to Social Media Sites designated by Ordering Activity, for the sole purpose of assisting Ordering Activity in making requests, complaints or claims to such designated Social Media Sites related to protecting Ordering Activity's Intellectual Property Rights (including without limitation claims of impersonation, privacy violations, and copyright or trademark violations), and only in accordance with Ordering Activity's express

instructions in each separate instance, which instructions shall be in writing or communicated to ZeroFOX through the applicable features of the Application Services (e.g., takedown request button/menu option). Ordering Activity represents and warrants that Ordering Activity has full right and authority to grant the licenses under this Section 4.4.

5. SUPPORT SERVICES.

5.1 Silver Support. During the Access Term, ZeroFOX agrees to provide the Silver Support Services, as set forth in **Exhibit 2**.

5.2 Platinum Support. If Ordering Activity elects to purchase Platinum Fully Managed Services pursuant to an Order Form, such services are subject to the ZeroFOX Platinum Fully Managed Services Agreement, which is incorporated herein as **Exhibit 3**.

6. PROFESSIONAL SERVICES; STATEMENTS OF WORK. Ordering Activity may request that ZeroFOX provide certain Professional Services related to Ordering Activity's use of the Application Services. Any Professional Services to be provided will be included in a Purchase Order. ZeroFOX shall be under no obligation to perform Professional Services until a Purchase Order in relation thereto has been mutually executed.

7. RESERVED.

8. TERM AND TERMINATION.

8.1 Duration of Agreement. This Agreement will remain in effect for the term of service agreed upon in the Purchase Order.

8.2 Reserved.

8.3 Reserved.

8.4 General consequences of termination. Effective immediately upon expiration or termination of this Agreement, (i) Ordering Activity shall cease, and shall direct its users to cease, use of the Application Services, (ii) all licenses granted under this Agreement will become void, and (iii) neither Party will have continuing rights to use any Confidential Information of the other Party or to exercise any Intellectual Property Rights having been licensed under this Agreement. As soon as practicable after termination or expiration of this Agreement, each Party will discontinue its use and will return the Confidential Information and proprietary materials of the other Party.

8.5 Reserved.

9. RESERVED.

10. REPRESENTATIONS AND WARRANTIES.

10.1 Reserved.

10.2 Service Warranty. During the Term, the Application Service offerings will meet the Service Levels specified in **Exhibit 1**. If the applicable Application Service fails to achieve the Service Levels so specified, then Ordering Activity will be entitled, as its sole and exclusive remedy, to a credit for the applicable Service in accordance with the terms set forth in **Exhibit 1**, provided, however that Ordering Activity notifies ZeroFOX in writing of any such service failures within fifteen (15) days.

10.3 Ordering Activity Representations and Warranties. Ordering Activity represents and warrants that it will not, nor will it permit or authorize anyone else to, upload, post, store, view, transmit, distribute or otherwise publish any Ordering Activity Content that (i) is unlawful, fraudulent, , invasive of another's privacy, or otherwise tortious; ; (ii) violates or infringes the rights of third parties, including, but not limited to, Intellectual Property Rights, rights of privacy or publicity or any other proprietary rights; or (iii) contains any viruses, Trojan horses, worms, time bombs, cancelbots, or other harmful components that are intended to damage, detrimentally interfere with, surreptitiously intercept or misappropriate any system, data or personal information.

10.4 Disclaimers. EXCEPT AS OTHERWISE EXPRESSLY REPRESENTED OR WARRANTED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, PROFESSIONAL SERVICES, THE DOCUMENTATION, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX ARE PROVIDED "AS IS," AND ZEROFOX DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ZEROFOX DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. NO WARRANTY IS MADE ON THE BASIS OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR TRADE USAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR

(3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. RESERVED.

12. RESERVED.

13. GLOSSARY OF DEFINED WORDS AND PHRASES.

For purposes of this Agreement, certain capitalized words and phrases will have the meanings set forth or cross-referenced below.

"Access Rights" are contractual rights to access and use the Application Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be defined by the terms of the applicable Order Form, including the Access Term, number of Social Entities, Authorized Sources or other use restrictions.

"Access Term" shall have the meaning given such term in the Order Form.

"Application Services" means the limited online data processing and analysis functionality of the ZeroFOX Products and all related features ordered by Ordering Activity, operated by ZeroFOX and made available to Ordering Activity via the ZeroFOX Platform.

"Authorized End Users" are individual persons for whom Ordering Activity has purchased Access Rights, and may include only employees or agents of Ordering Activity who are acting on Ordering Activity's behalf in the internal operation of Ordering Activity's business.

"Authorized Sources" are the third-party websites or other online sources to the extent identified in an Order Form, from which content may be retrieved by Ordering Activity or at Ordering Activity's direction using the automated tools within the Application Services. If no such sources are specifically identified, then subject to the obligations and restrictions set forth in Sections 4 and 10.3 of this Agreement and applicable laws any sources shall be deemed authorized.

"Confidential Information" means: any information or data (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations) provided or disclosed by disclosing party or its agents to receiving party that is: (i) fixed in a tangible medium and marked as the confidential or proprietary information of the disclosing party; (ii) otherwise provided or disclosed by or on behalf of the disclosing party marked as proprietary at the time the information is provided; or (iii) not falling within any of the prior clauses of this sentence, but which, a reasonable person would conclude is of a confidential nature given the facts and circumstances of such disclosure or (iv) the ZeroFOX Products, the Application Services, the Services and the Documentation.

"Ordering Activity Content" means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity, including without limitation, any social media data, as well as any other data that is provided to ZeroFOX from Ordering Activity, that is uploaded, stored, analyzed and made available to and through the Application Services. **"Documentation"** means the documentation provided by ZeroFOX relating to the Application Services and/or the ZeroFOX Products.

"Intellectual Property Rights" are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods; (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

"Purchase Order" means a document signed by both Parties whereby the Ordering Activity orders one or more of the following: (i) access to the Application Services, (ii) Professional Services, or (iii) any other products or services to be offered by ZeroFOX pursuant to this Agreement.

"Platinum Fully Managed Services" means those support and monitoring services more fully described in the Platinum Fully Managed Services Agreement.

"Professional Services" means the installation, configuration and/or training services as specified in an Order Form.

"Reports" means any reports, summaries, analyses, data, information or other items of output, whether in textual or graphical form, produced by or derived from the Services, including any reports on or representations of the Ordering Activity Content, Third Party Content or other content after processing or transformation in any manner by or pursuant to the Services.

"Services" means collectively or individually, the Application Services, the Support Services and/or the Professional Services.

"Silver Support Services" means those application support services more fully described in **Exhibit 2**.

"Social Entities" means the social entities identified by Ordering Activity in an Order Form for monitoring by the Application Services, which may include people, organizations or brands, keywords or data, or hashtags.

"Social Media Sites" means a social media website owned or operated by a third party, including without limitation Twitter, Facebook and LinkedIn.

"Support Services" means, as applicable, the Silver Support Services or the Platinum Fully Managed Services.

"Term" has the meaning given such term in Section 8.1.

"Third Party Content" means all data, social media content, posts, blogs, surveys, ratings, reviews, feedback or any other information collected or otherwise obtained from any website, including content obtained through Social Media Sites.

"Use Restrictions" means any use restriction that is specifically agreed to in an Order Form, which may include maximum annual Ordering Activity Content, authorized sources or maximum through-put.

"ZeroFOX Products" means the object code version of ZeroFOX proprietary software applications including all updates, upgrades, bug fixes and components as identified on the applicable Order Form.

"ZeroFOX Platform" means the applications accessible at the URLs <https://cloud.zerofox.com> or <https://recon.zerofox.com>, as applicable.

Section - EXHIBIT 1 SERVICE LEVEL AGREEMENT

This **Exhibit 1** sets forth **Service Levels** governing the contractual relationship between ZeroFOX and the Ordering Activity.

SERVICE LEVEL STANDARDS: The following defines service level standards for the Services:

Service/Activity	Service Level	Service Level Credit	Service Level Credit
Availability of the Services	The Services will be available to users for normal use 98.00% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades, and will be communicated with at least 24 hours of notice. Any downtime that might require more than 2 hours will be scheduled at least 7 days in advance.	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date
Restore Time	In the event of unscheduled downtime the system shall be restored to a fully operational state within 48 hours.	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date
Resolution of Critical Malfunction	Failure to comply with the requirements with respect to Critical malfunctions in a month. Critical Malfunction shall mean a failure of the Software which severely impacts Customer's ability to provide service and which cannot be temporarily eliminated through the use of a "Bypass" or "Work Around."	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date

Section - EXHIBIT 2 SILVER SUPPORT SERVICES AGREEMENT

1. This **Silver Support Services Agreement** (the "**Agreement**") is hereby incorporated into this Attachment A. **SILVER SUPPORT SERVICES**. During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following support services (the "**Silver Support Services**"):

Phone or Email Support	Monday-Friday 9:00AM - 6:00PM
Annual Takedown Limit	Per Sales Order
Platform QuickStart (Setup & Onboarding)	Per Sales Order
Support Response Time	2 Days
Weekly Reporting	Included
Monthly Reporting	Included
Product Upgrades	Included
Additional FoxScript Development	\$1000/per FoxScript

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2

Support

Email Address: support@zerofox.com

2. **“Social Entities”** which are identified by Customer, to represent people, organizations or brands, keywords or data, or hashtags, may not be changed without the prior written consent of ZeroFOX.
3. **Additional Professional Services.** Silver Support Services do not include managed services, on-site support, training, senior incident management support and technical analysis, implementation or documentation services (collectively, **“Professional Services”**). Any Professional Services to be provided will be included in an Order Form, with additional terms set forth in a Statement of Work. ZeroFOX shall be under no obligation to perform Professional Services until an Order Form and Statement of Work in relation thereto has been mutually executed.

Section - EXHIBIT 3 PLATINUM FULLY-MANAGED SERVICES AGREEMENT

This **Platinum Fully-Managed Services Agreement** (the **“Agreement”**) is hereby incorporated into this Attachment A.

1. **PLATINUM FULLY-MANAGED SERVICES.** During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following services (the **“Managed Services”**) if Ordering Activity has purchased such Managed Services:
 - a. ZeroFOX will monitor alerts provided by the Application Services for social entities that are identified by Ordering Activity, such as people, organizations or brands, keywords or data, or hashtags (each, a **“Social Entity”**). Ordering Activity will initially designate the specific Social Entities to be monitored by ZeroFOX, up to the number of Social Entities designated on the applicable Order Form. Social Entities may not be changed without the prior written consent of ZeroFOX. As part of the Managed Services, ZeroFOX will:
 - i. monitor the Social Entities defined in the Order Form;
 - ii. create FoxScript rules based on criteria established by Ordering Activity or ZeroFOX, as applicable;
 - iii. monitor alerts identified by the Application Services, and investigate and analyze such alerts;
 - iv. create an automated takedown process based on guidelines established by Ordering Activity;
 - v. submit takedowns to social media networks on behalf of Ordering Activity;
 - vi. make provision for token refreshing as needed; and
 - b. All Managed Services will be performed remotely unless otherwise set forth on an Order Form. ZeroFOX is under no obligation to perform on-site services as part of this Agreement.
 - c. ZeroFOX will provide commercially reasonable telephone and / or email support for problem determination and resolution during normal business days.
 - d. Summary of services are:

Phone or Email Support	Monday-Friday 8:00AM - 8:00PM EST
Dedicated Customer Success Expert	12 Hours/Quarter
Annual Takedown Limit	Per Sales Order
Platform QuickStart (Setup & Onboarding)	Per Sales Order
Support Response Time	Less Than 24 Hours
Weekly Reporting	Included
Monthly Executive Reporting	Included
Annual Personalized Training	Included

Annual Optimization & Tuning	Included
Data Export	Included
Product Upgrades	Included
FoxScript Development	1 Per Quarter

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2

Support

Email Address: support@zerofox.com

EMC SOFTWARE USE RIGHTS

EMC® software products (“Software”) are licensed by EMC to customers who order directly from EMC (“Direct End-Users”) under a signature bearing agreement between EMC and the Direct End-User or under the terms of an End-User License Agreement (“EULA”) that is between EMC and the entity making productive use of the Software. The EULA is either in a hard-copy format that is shrink-wrapped to the software media packaging or stated in an electronic “click-wrap” or click-to-accept format that must be electronically accepted prior to downloading and/or installing the Software. EMC also provides Software to its Channel Partners (organizations that resell the license directly to or through additional tiers of resellers to the organization that makes productive use of the Software [“Indirect End-User”]). Channel Partners are required to obtain a written, signed license with the Indirect End-User in a format that meets EMC license requirements, unless the Software is accompanied by the EMC EULA. The information in this Software Use Rights (“SUR”) document is provided to further define the license rights and limitations for Software products.

Software is licensed via a unit of measure (“UOM”) that quantifies the scope of the license rights being granted on the basis of the particular licensing model used by EMC for such Software. These licensing models are described in this document. The UOM applicable to the Software being offered pursuant to an EMC Quote may be designated in the Software product description in the EMC Quote by the codes described in the following table:

UOM Code	UOM (Unit of Measure)
CA	Registered Capacity of data measured in terabytes
CB	Raw Capacity of data measured in terabytes
CC	Usable Capacity of data measured in terabytes
FA	Foundation
FB	Foundation related Service Connector
FC	Foundation related Application Instance
FD	Foundation related Advanced Logging Instance
FE	Foundation related Service Instance
IA	Instance measured per server
IB	Instance measured per virtual machine
IC	Instance measured per storage array
ID	Instance measured per node
IE	Instance measured per engine
MA	Managed Entity measured per device
MB	Managed Entity measured per inbox or mailbox
MC	Managed Entity measured per user
PA	Process Rate measured in pages per year
UA	Named User
UB	Concurrent User
ZA	Central Processing Unit cores (quantity 1-6 cores)
ZB	Central Processing Unit cores (quantity 7-12 cores)
ZC	Individual Central Processing Unit Core

EMC SOFTWARE MODELS

REGISTERED CAPACITY MODEL

Model Description

Licensing and pricing is based upon the Registered Capacity of one or more storage array, Server, or other device(s) on which the Software is licensed for use. The Registered Capacity describes the maximum quantity of data for which the

functionality of the Software is authorized for use. The total capacity of the device may exceed the Registered Capacity that the Software is licensed to operate on.

Software that is licensed on the basis of Registered Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. Each storage array or other hardware device requires the purchase of (i) an initial base product (independent of Registered Capacity) and (ii) an additional quantity of add-on products that reflect the amount of Registered Capacity on which the applicable Software is authorized for use. Customers may subsequently determine they need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, customers must either purchase an appropriate number of additional licenses to cover the increase in the Registered Capacity, or purchase a new base product plus Software in instances where a capacity limitation has been reached.

Model Specific Terms and Conditions

- The purchase of a base product license plus add-on product licenses (which are measured by Registered Capacity) are both needed to use the Software product(s).

RAW CAPACITY MODEL

Model Description

Licensing and pricing is based upon the total capacity of the storage array or other devices on which the Software is licensed for use. Software licensed on the basis of Raw Capacity is typically licensed for use only on a specifically identified storage array. This model uses a “base plus capacity” approach as described in the Registered Capacity model above, where the customer purchases one base product license and then purchases incremental capacity add-on product licenses to equal the raw capacity of the system on which the Software will operate.

Model Specific Terms and Conditions

- A base product license plus add-on product licenses (which are measured by Raw Capacity) are both needed to use the Software product(s).

USABLE CAPACITY MODEL

Model Description

Licensing and pricing are based upon the Usable Capacity of one or more storage arrays, Servers, or other devices on which the Software is licensed for use. The Usable Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The Usable Capacity of a licensed device is calculated by EMC on the basis of the Raw Capacity minus Overhead. Raw Capacity is the total data storage capacity of a licensed device. Overhead is that portion of Raw Capacity which EMC determines is reserved for or allocated to spares, RAID types and applications running on a licensed device and on which the software functionality is not to be used.

Software that is licensed on the basis of Usable Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. The Customer or EMC may subsequently make a change to the Raw Capacity, configuration, RAID level or overall environment of a licensed device that increases the Usable Capacity to an amount in excess of the quantity for which the Software has been licensed. In these cases, Customer must purchase an appropriate additional license to cover the increase in the Usable Capacity.

Model Specific Term and Conditions

- The purchase of a base product license plus add-on product licenses (which are measured by Usable Capacity) are needed to use the Software product(s).

INSTANCE MODEL

Model Description

Licensing and pricing is based upon the nature of the hardware platform on which the Software operates. It includes servers that run a single instance, partition, or virtual machine as well as servers that run multiple instances, partitions, or virtual machines (both physical and virtual machines). Each partition running the application constitutes an instance.

This model is also used with server-based Software and Software that is licensed to a specific storage array or to an engine within a storage array. An engine consists of a CPU, cache and data storage (regardless of the speed, performance or capacity of the engine components), as designated by EMC. Adding an engine to an existing storage array enclosure is designated as an upgrade to the existing storage array.

Model Specific Terms and Conditions

- Server-based Software licensed in accordance with the Instance model is generally priced for a particular OS type, such as Windows, Solaris, etc.
- An Instance license may provide support for only a single application type, such as Exchange or Oracle.

MANAGED ENTITY LICENSING MODEL

Model Description

Licensing and pricing is based upon the total number of entities being managed or inspected by the Software. An entity is defined as any singular item being managed or monitored by the EMC Software and can include third-party hardware, a running instance of a software program, an abstract resource (such as an email inbox), or a user. The Software licensed under this model may be used on or with a specific entity or quantity of entities of a specified type.

Examples of physical devices include, but are not limited to: routers, switches, firewalls, load balancers, storage arrays, NAS data movers, NAS systems, blades, and IP phones.

Examples of instances of a software program include, but are not limited to: databases, volume managers, file systems, operating systems, hypervisors, backup software systems, and CMDB systems. An example of an abstract resource is an email inbox being inspected or managed by the Software product. An example of a user as a managed entity is a user that authenticates to a VPN or some other system using the Software product.

Model Specific Terms and Conditions

- **Managed Entity Metric Considerations:** Under this licensing model, some Software will be licensed by the total number of entities the Software is interacting with while other Software will be licensed for specifically identified entities.

PROCESS RATE LICENSING MODEL

Model Description

Licensing and pricing is based upon the cumulative amount of work done by the Software over a specified time period.

Model Specific Terms and Conditions

- Tiered pricing (price per mailbox decreases as the number of email mailboxes purchased increases).
- Licensing for EMC EmailXtender is limited to the sole and exclusive benefit and use of the user. License rights may not be further assigned or sublicensed to any other party for any other purpose.

NAMED USER LICENSING MODEL

Model Description

Licensing and pricing is based upon the total number of unique named users or seats accessing the Software, whether such users are actively using the Software, or accessing the Software at any given time. If a named user of the Software leaves the employ of the customer, or moves into a role that doesn't require access to the Software, the seat does not have to be relinquished by the customer, but can be reassigned to a different named user.

CONCURRENT USER LICENSING MODEL

Model Description

This model specifies the maximum number of concurrent users who are accessing the Software at any instance in time.

CENTRAL PROCESSING UNIT ("CPU") MODEL

Model Description

Licensing and pricing is based upon the total number of CPUs present in the computer upon which the Software will operate. A two-tier system is used based on the number of cores present. These two tiers can be combined as needed on CPUs with greater than 12 cores. Neither tier can be split across more than one CPU.

INDIVIDUAL CENTRAL PROCESSING UNIT (“CPU”) CORE MODEL

Model Description

Licensing and pricing is based upon the number of “Cores” on which the Software will operate. A “Core” is defined on the basis of the environment in which the Software operates.

When operating the Software in a “bare metal” environment, which means a physical machine without a hypervisor product capable of creating Virtual Machines, and excludes operation within a cloud service environment, a “Core” equals a single, computational unit of the processor.

When operating the Software in a hypervisor (Virtual Machine) environment, a “Core” equals a single unit of virtual processing power (commonly referred to as a “vCPU”) configured to each Virtual Machine. A Virtual Machine is a software container able to run its own operating system and execute applications, just as a physical computer does.

When operating the Software in a public cloud services environment, a “Core” equals a single, basic, most granular unit of computational power as defined by the cloud service provider. This may include, but is not limited to such units expressed as the number of “vCPUs,” “virtual CPUs,” “virtual cores,” and “dynos.”

FOUNDATION LICENSING MODEL

Model Description

Licensing and pricing is based upon the number of Foundations on which the Application Instances will operate. A single Foundation includes use on up to all of the virtual machines running on physical servers at one physical location owned or operated by the licensee.

SERVICE CONNECTOR LICENSING MODEL

Model Description

Licensing and pricing is based on the total number of Foundations (no more than one (1) Service Connector per Foundation) to which a licensee wishes to allow an independent application service, such as a database or a messaging system, to connect to the Foundation. A Service Connector is not needed for a Foundation if all of the information to be processed or acted upon is already housed within the applicable Foundation.

APPLICATION INSTANCE LICENSING MODEL

Model Description

Licensing and pricing is based on the total number of Application Instances that a licensee wishes to simultaneously run on the applicable Foundation or on Pivotal’s online Platform-as-a-Service offering (currently called Pivotal Web Services (“PWS”). Each Application Instance represents a single process running on a single virtual machine within the Foundation or PWS.

ADVANCED LOGGING INSTANCE LICENSING MODEL

Model Description

Licensing and pricing is based on the total number of Advanced Logging Instances that a licensee wishes to run simultaneously on the applicable Foundation. Each Advanced Logging Instance enables the licensee to track and observe the operation and execution of the single Application Instance with which it is associated.

FOUNDATION RELATED SERVICE INSTANCE LICENSING MODEL

Model Description

Licensing and pricing is based on the total number of Service Instances that a licensee wishes to simultaneously run on the applicable Foundation. Each Service Instance represents a single, unique configuration of a service (such as a database or other software or middleware) within a Foundation platform that utilizes resources (such as CPU, cores,

virtual machines, memory, messaging, development and/or data storage) within the same or an another licensed Foundation.

ADDITIONAL INFORMATION

Software Access and Use Requirements

Except as otherwise agreed in writing, licenses are required for each device/user accessing or using the Software, notwithstanding any non-EMC technology used to: (i) reduce the number of devices or users the Software directly manages; (ii) pool connections; or (iii) reduce the number of devices/users accessing or using the Software.

Pure Custom Client

Per-Seat licenses of Pure Custom Client are required for each user of each software application accessing a Content Server repository and deploying full read/write access to the Content Server, including applications providing end-user access via application servers, commerce servers, Web servers, or personalization servers.

Read-Only Access

Per-Seat licenses of Read-Only Client, or Documentum Platform Bundle, which includes Read-Only entitlement, are required for each user of each software application accessing a Content Server repository and deploying read-only access to the Content Server, including applications providing access via application servers, commerce servers, Web servers or personalization servers on your behalf. Read-Only Access is limited to the following Content Server functionality only: individual login, individualized security, query/search capability, viewing of content and properties, and personalized delivery of content based on user or information and/or security. Access to the following functionality is excluded from Read-Only Access: import or creation of new content, editing of existing content or properties (check in/checkout), creation of and participation in workflows, promotion or demotion of content in a lifecycle, creation of lifecycles, or any other operation that changes the content of a Content Server repository. The customer is responsible for proper configuration of the system to ensure that Read-Only users are limited to read-only functionality via access control settings. The Documentum Platform Bundle license provides entitlement for Read-Only access using Webtop or third-party custom clients. No other Documentum clients may be used for Read-Only access.

Captiva Input*Accel* (IA) and Documentum Reporting Services (DRS)

Each licensed installation of IA and DRS includes a single copy of SAP's Business Objects Crystal Reports Designer, which you may use solely in connection with your licensed use of IA or DRS, and only with data created or used by IA or DRS. You may not install more than one copy of Crystal Reports Designer per licensed installation of IA or DRS.

xPlore Software

Use of EMC's ApplicationXtender xPlore software product is only permitted with content residing in EMC's ApplicationXtender software product. No standalone use of xPlore is permitted except with the written consent of EMC.

xCP User

Single App is licensed for a Named User to access a single xCP-based application. If a user needs access to more than one xCP-based application, an additional xCP Single App license is required or the user should be licensed for the xCP User Unlimited license.

Application Specific Licensing (ASL)

Any software product EMC designates as Application Specific License products, including the underlying components of any software bundle, may only be used for the specific solution/application for which it is licensed. Use of the software or any individual components for any other purpose, including general content management functionality, is prohibited. The following is a partial list of software products designated as ASL products:

- EMC Clinical Archiving
- EMC Documentum for Life Sciences – Quality and Manufacturing
- EMC Documentum for Life Sciences – Electronic Trial Master File
- EMC Documentum for Life Sciences – Research and Development
- EMC Documentum for Life Sciences – Submissions Store and View
- EMC Engineering, Plant and Facilities Management – Asset Operations
- EMC Engineering, Plant and Facilities Management – Capital Projects

TEMPORARY TERM EXPIRING LICENSES

Evaluation and Other Non-production Use Licenses

In certain instances and at EMC's discretion, EMC may grant a short-term license for the purpose of demonstration, evaluation, or some other non-production internal use. Such license may be issued as a 30-day license for standalone Software or a 90-day license for array-based systems Software. At the end of the temporary term, the license to use the Software expires and the Software may cease to operate. The temporary term begins once the licenses are made available (e.g., either by making the Software available for download or by delivering the CD to the customer).

Failover Expiring Licenses

Each license entitlement includes the right to run the Software on a separate computer in a failover environment for up to 30 separate days in any given calendar year for purposes of emergency management. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software. License keys for such licenses must be obtained from EMC by making a request through EMC Powerlink®.

Backup Testing Expiring License

For the purpose of testing physical copies of backups, license rights include the capability to run the Software on an unlicensed computer for up to 30 days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Emergency Expiring License

EMC will allow and support the use of emergency licenses for customer critical situations, such as getting back into production in a disaster recovery situation or resolving a situation with an incorrect License Key being delivered. Each license entitlement includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the software.

Service License

EMC will allow the use of service-related licenses for customer situations in conjunction with EMC's support organization when initiated and used by EMC support personnel. The license includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year.

MOVE POLICY

A "move" of a Software license is defined as when the original licensee stops using a Software product on one system or device and begins using it on another of the licensee's own systems or devices.

Software Type	Moveable?	Comments
Operating Environment (OE)	No	Operating system-type software installed on EMC storage device or other hardware. Enables basic system functionality. This Software is licensed solely for use on the hardware device on which it is shipped; therefore, the license is not eligible to be moved to another device.
OE Application	Yes	Software applications that can only run on EMC OE Software. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC.

Platform	Yes	Software applications that run on non-EMC OE's but interacts with EMC products. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original EMC hardware system; the features, functionality, and price of the Software are the same on the new and old EMC hardware systems; the source EMC hardware system is technologically compatible with the target EMC hardware system; the move is not prohibited by the product support agreement; any applicable move fees are paid to EMC. Given the above constraints, the following additional rules apply: • Moves from multiple systems to one system (consolidation) are allowed. • Moves from one system to two or more systems are not allowed, as a software license is indivisible. • Moving a raw capacity license to a second system for use as a registered capacity license is not allowed and vice versa.
Host Application	Yes	Software which is not designed solely for installation and use on an EMC storage device, but which runs on a standalone server, an appliance or some other hardware device. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC.

TRANSFER POLICY

“Transfer” of a Software license is defined as when the original licensee has stopped using a Software product and wants to sell or otherwise transfer the rights to use the Software to a secondary purchaser. EMC does not allow transfers under any circumstances; in all cases, the secondary purchaser must purchase a new license to run the Software.

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EMC BASIC SUPPORT

The following chart lists the service features of Basic Support provided under EMC's standard warranty and/or maintenance terms.

Basic Support is available as to:

1. EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as
 - including Basic Support during the applicable warranty period; or
 - eligible for Basic Support during a subsequent maintenance period
2. EMC Software which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Basic Support during a maintenance period.

SERVICE FEATURE	DESCRIPTION	BASIC SUPPORT – COVERAGE DETAILS
GLOBAL TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface 24x7 to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem, or, (ii) when deemed necessary by EMC Onsite Response as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 2 local business hours; on a 9x5 basis Severity Level 2: 4 local business hours; on a 9x5 basis Severity Level 3: 8 local business hours; on a 9x5 basis Severity Level 4: 12 local business hours; on a 9x5 basis
ONSITE RESPONSE	EMC sends authorized personnel to the installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response is necessary.	Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing.
REPLACEMENT PARTS DELIVERY	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement parts will be shipped to the Customer for next local business day arrival. Local country shipment cut-off times may impact the next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.

RIGHTS TO NEW RELEASES OF SOFTWARE	EMC provides the rights to new Software Releases as made generally available by EMC.	Included.
INSTALLATION OF SOFTWARE RELEASES	Installation of new Software Releases is not included.	Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).
24X7 REMOTE MONITORING AND REPAIR	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination.	Not included.
24X7 ACCESS TO ONLINE SUPPORT TOOLS	Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.	Included.

***Severity Levels:**

- **Severity 1 Critical:** a severe problem is preventing the customer or workgroup from performing critical business functions.
- **Severity 2 High:** the customer or workgroup is able to perform job function, but performance of job function is degraded or severely limited.
- **Severity 3 Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4 Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. June 4, 2014

EMC ENHANCED SUPPORT

The following chart lists the service features of Enhanced Support provided under EMC's warranty and/or maintenance terms.

Enhanced Support is available as to:

1. EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as
 - including Enhanced Support during the applicable warranty period; or
 - eligible for upgrade to Enhanced Support during the applicable warranty period; or
 - eligible for Enhanced Support during a subsequent maintenance period
2. EMC Software which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Enhanced Support during a maintenance period

SERVICE FEATURE	DESCRIPTION	ENHANCED SUPPORT □ COVERAGE DETAILS
GLOBAL TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Response as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 1 hour; on a 24x7 basis Severity Level 2: 3 hours; on a 24x7 basis Severity Level 3: 4 local business hours Severity Level 4: 10 local business hours
ONSITE RESPONSE	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support necessary.	Included for Equipment only. Initial Onsite Response objective is next local business day, on a 9x5 basis, after EMC deems Onsite Response is necessary. Onsite Response does not apply to Software, but may be separately purchased.
REPLACEMENT PARTS DELIVERY	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement part delivery objective is next local business day. Local country shipment cut-off times may impact next local business day delivery of replacement parts and the related Onsite Response. Installation of Customer Replaceable Units (CRUs) is the responsibility of the Customer. Refer to the EMC Product Warranty and Maintenance Table for listing of parts designated as CRUs. Installation of all other non-CRU parts performed by EMC. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If a Customer installs the CRU, the Customer is responsible for returning the replaced CRU to a facility designated by EMC.

RIGHTS TO NEW RELEASES OF SOFTWARE	EMC provides the rights to new Software Releases as made generally available by EMC.	Included.
INSTALLATION OF SOFTWARE RELEASES	Installation of new Software Releases is not included.	Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).
24x7 REMOTE MONITORING AND REPAIR	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Global Technical Support and Onsite Response will apply as previously described.
24x7 ACCESS TO ONLINE SUPPORT TOOLS	Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.	Included.

***Severity Levels:**

- **Severity 1 □ Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 □ High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 □ Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4 □ Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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EMC PREMIUM SUPPORT

The following chart lists the service features of Premium Support provided under EMC's warranty and/or maintenance terms.

Premium Support is available as to:

1. EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as
 - including Premium Support during the applicable warranty period; or
 - eligible for upgrade to Premium Support during the applicable warranty period; or
 - eligible for Premium Support during a subsequent maintenance period
2. EMC Software which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Premium Support during a maintenance period

SERVICE FEATURE	DESCRIPTION	PREMIUM SUPPORT □ COVERAGE DETAILS
GLOBAL TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Response as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 30 minutes; on a 24x7 basis Severity Level 2: 2 hours; on a 24x7 basis Severity Level 3: 3 local business hours Severity Level 4: 8 local business hours
ONSITE RESPONSE	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary.	Included for Equipment only. Initial Onsite Response objective is based on Severity Level, within the following time period after EMC deems Onsite Support is necessary. Severity Level 1: 4 hours on a 24x7 basis Severity Level 2: Within 12 hours on a 24x7 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours Onsite Response does not apply to Software, but may be separately purchased.
REPLACEMENT PARTS DELIVERY	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement part delivery objective is based upon Severity Level, within the following time period after EMC deems a replacement part is necessary: Severity Level 1: 4 hours on a 24x7 basis Severity Level 2: Within 12 hours on a 24x7 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours

		Local country shipment cut-off times may impact the same day/next local business day delivery of replacement parts and the related Onsite Response. Installation of all replacement parts performed by EMC as part of Onsite Response, but Customer has option to perform installation of Customer Replaceable Units (CRUs). See EMC Product Warranty and Maintenance Table for listing of parts designated as CRUs for specific Equipment. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If Customer installs the CRU, Customer is responsible for returning the replaced CRU to a facility designated by EMC.
RIGHTS TO NEW RELEASES OF SOFTWARE	EMC provides the rights to new Software Releases as made generally available by EMC.	Included.
INSTALLATION OF SOFTWARE RELEASES	EMC will perform the installation of new Software Releases.	Included for Software which EMC determines is Equipment operating environment Software. Customer will perform the installation of new Software Releases of Software (that is, Software not classified as Equipment operating environment Software), unless otherwise deemed necessary by EMC.
24x7 REMOTE MONITORING AND REPAIR	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Global Technical Support and Onsite Response will apply as previously described.
24x7 ACCESS TO ONLINE SUPPORT TOOLS	Customers who have properly registered have access on a 24X7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.	Included.

***Severity Levels:**

- **Severity 1 □ Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 □ High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 □ Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4 □ Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

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EMC SOFTWARE WARRANTY

1. Except as otherwise agreed by EMC and the customer in a written agreement or as set forth below, the warranty duration for software provided under an agreement directly between EMC as licensor and the customer is ninety (90) days from the date of shipment, or the date of electronic availability, as applicable.
2. The warranty duration for Core Software (the programming or microcode firmware included by EMC with equipment to enable the equipment to perform its basic functions) is the same as the warranty duration of the equipment on which the Core Software is designed to operate.
3. The warranty duration for software (i) identified as “EMC Select;” or (ii) provided under a license agreement from an entity other than EMC, is as separately stated in the license agreement accompanying such software.
4. The foregoing warranty durations apply to software listed on orders submitted to EMC during the period in which the applicable warranty duration is in effect. EMC may change the warranty durations described above at any time and shall notify customer of such change via reposting to this site. However, any such change shall not apply to any software listed on an order referencing a valid EMC Quote that is dated prior to the date of such change.

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EMC PRODUCT WARRANTY AND MAINTENANCE TABLE

The table below sets forth EMC® product-specific warranty and maintenance terms and information. Each product identified as equipment also includes its related operating system, operating environment or microcode (also defined in many contracts as “Core software”), if any, unless the table indicates that such operating system is licensed as a separate product. Any EMC software that is licensed as a separate product and is not specifically identified on this table is governed by the terms stated in the row entitled “software.”

EMC recommends that you locate products on the following table by simultaneously pressing the “Control” key and the letter “f” key to activate the “Find” feature, and then typing in the name of the applicable product.

Additional information about available Support Options as well as other important information can be found by clicking the link found [here](#).

Notice: In accordance with widely used business practices in the IT industry and in support of EMC’s worldwide sustainability and recycling initiatives, Equipment may contain components that are (i) previously unused; or (ii) re-manufactured to contain the most current updates, meet all relevant test specifications and be functionally equivalent to previously unused components. Spare, upgrade and/or replacement components may be re-manufactured. EMC warranty terms apply equally to all components. For information on EMC’s recycling and sustainability efforts please [click here](#).

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
AlphaStor Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
ApplicationXtender Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
AppSync	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Atmos Equipment	3 years; Enhanced	Premium, Enhanced	Disk drives (Atmos software 2.2.0 or greater required)
Atmos Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None EMC will perform the installation of software updates
Autograph Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Automated Failover Manager (AFM) Software	90 days; defective media replacement Support during warranty available with purchase of a RecoverPoint or MirrorView maintenance support option.	Premium	None The AFM is included with RecoverPoint or MirrorView software only
AutoStart Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
AutoSwap Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
AVALONidm Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
Avamar Data Store	2 years; Enhanced	Premium, Enhanced	Power supply, disk drives
Avamar Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Backup Manager for SharePoint Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Blade Logic Brand Software	No longer available for sale; maintenance only	Premium, Enhanced	None
Captiva Family Software (Except Pixtools and QuickScanPro products)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Celerra NS-120 and NS-480 Equipment	3 years; Enhanced	Enhanced, Premium	Power/cooling module (in processor enclosures), blade, management I/O module (in Storage Processor enclosure), SFP transceiver, standby power supply, and disk
Celerra NS20 Equipment	3 years; Enhanced	Enhanced, Premium	Power/cooling module (in processor enclosures), SFP transceiver module, disk
Celerra NS-960 and NS-G8 Equipment	3 years; Enhanced	Enhanced, Premium	SFP transceivers, X-Blade enclosure power supply, X-Blade enclosure fan, Storage Processor enclosure power supply, Storage Processor enclosure fan, and disk
Celerra NS-G2 Equipment	3 years; Enhanced	Enhanced, Premium	Power/cooling Module (in Processor Enclosures), fan blade, SFP transceiver, and disk
Celerra NX4 equipment	3 years; Enhanced	Enhanced, Premium	Power/cooling module (in processor enclosures, and in disk array enclosures), blade, Storage Processor (SP), SP DIMM memory, SP I/O module, SFP transceiver, standby Power supply, link control card, and disk
Celerra NX4 Core software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Not Applicable
Celerra VG2 and VG8 Equipment	3 years; Enhanced	Premium, Enhanced	Power/Cooling Module, SFP-compliant transceiver, UltraFlex I/O Module, Management Module
Centera Family Equipment	2 years, Enhanced	Premium, Enhanced	With Enhanced support option, Customer is responsible for resetting of modems and nodes
Centera Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None EMC will perform the installation of software updates
CLARiiON AX4 series equipment	3 years; Enhanced	Premium, Enhanced	All components; Installation of AX4 Core software and system-based software releases
CLARiiON AX4 software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Not Applicable
CLARiiON CX4-series Equipment	No longer available for sale; maintenance only	Premium, Enhanced	Power supply, cooling units, small form factor pluggable transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool, DAE power supply, LCC; Installation of CX4-Series Core software and system-based software releases

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
CloudArray Software (Appliance and Virtual Edition)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
CloudArray Appliance Equipment	1 year; Limited	Premium	Disk Drives, Power Supply
Cloud Tiering Appliance (CTA) Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Cloud Tiering Appliance – Virtual Edition (CTA/VE) Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Cloud Tiering Appliance (CTA) Equipment	1 year; Enhanced	Premium, Enhanced	Disk Drives, Power Supply
Connectrix Family of Directors	3 years; Enhanced	Enhanced, Premium	Power supplies, fans, optics, cables
Connectrix Family of Switches (except Connectrix devices listed below)	3 years; Enhanced	Enhanced, Premium	Power supplies, fans, optics, cables and the complete switch when applicable
Connectrix Manager Software including CMDCE, CMCNE, Cisco Fabric Manager and Data Center Network Manager	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Connectrix NEX-5010, NEX-5020, AP-7600B, ES-5832B, MP-8000B, MP-7500B, MP-7800B, MP-7840B	2 years; Premium	Premium	None
CopyPoint Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Data Domain Software	90 day; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Data Domain System	1 year hardware only; Limited Warranty Software (DDOS) 90 day; defective media replacement Support for DDOS during warranty available with purchase of a maintenance support option	Premium, Enhanced	Power supply, disk drives, SAS controller on ES20, external fans, bezels, cables and rails
Data Protection Advisor	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
DatabaseXtender Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Disk Library DL1500, DL3000, and 3D 4000 Family Equipment	3 years; Enhanced	Premium, Enhanced	None
Disk Library Family Equipment (except for DL1500, DL3000, and 3D 4000)	2 years; Premium	Premium	None
Disk Library for Mainframe, DLm8000/6000/2000/1000, DLm8100 w/VMAX, DLm8100 w/VNX/DD, DLm2100 w/DD, DLm2100 w/VNX	2 years; Premium	Premium	None

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
DiskXtender Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Documentum Family Software (except ApplicationXtender)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
ECS Appliance Equipment	Equipment: 1 year; Limited	Premium, Enhanced	None
ECS Appliance Software	90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
eRoom Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
File Management Appliance Equipment	1 year; Enhanced	Premium, Enhanced	Disk drives, power supplies
File Management Appliance Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Geographically Dispersed Disaster Restart Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Greenplum Data Computing Appliance (DCA)	1 year hardware only; Limited Warranty	Premium	None
Greenplum Data Integration Accelerator ("DIA")	1 Year hardware only; Limited Warranty 90 days for software in the DIA; defective media replacement Support for software during warranty available with the purchase of a maintenance support option	Premium (covers both hardware and software portion of the DIA)	EMC will perform the installation of software updates included with the purchase of the DIA
Greenplum DCA OE (operating environment Software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	EMC will perform the installation of software updates included with the purchase of the DCA. However, before EMC can perform the installation of an out-of-family software update (e.g., 4.0 to 4.1) for the Greenplum Database software on the DCA, Customer is required to purchase the DCA Greenplum Database Upgrade Preparation Service.
Greenplum Family Standalone Production Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
HomeBase Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced	None
InfoMover	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Ionix ControlCenter Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Ionix Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Ionix for IT Operations Intelligence (formerly Smarts)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Ionix Network Configuration Manager (formerly Voyence)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
Isilon Family Equipment	1 year hardware only; Limited Warranty	Premium, Enhanced	Power supplies, power cables, NVRAM batteries, Hard Disks, Rail kits, IB switches, IB cables, faceplates
Isilon Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
IT Compliance Analyzer Application Edition Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
IT Performance Reporter Network Edition Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
IT Process Centre Request Management Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Mainframe Disk Library (MDL) Equipment	1 year; Basic	Premium, Enhanced, Basic	Disk drives, power supplies
Mainframe Disk Library (MDL) Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	None
MirrorView Software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Navisphere Family Software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
NetWorker Family Software (except for NetWorker Fast Start)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Open Migrator/LM Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Open Replicator For Symmetrix Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
PowerExchange PWX Connector to Greenplum	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
PowerPath Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
ProSphere Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Rainfinity Appliance Equipment	1 year; Enhanced	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	Disk drives and power supply
Rainfinity Appliance Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	
RecoverPoint Equipment	3 years; Premium	Premium	None
RecoverPoint Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
Replication Manager Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
RepliStor Software	No longer available for sale; maintenance only	Premium, Enhanced	None
SAN Copy Software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
ScaleIO	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	None
SnapView Software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Software (all other EMC Software products not listed separately in this table)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Basic	None
SourceOne eDiscovery Equipment	1 year; Enhanced	Premium, Enhanced	Power supply, disk drives
SourceOne eDiscovery Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
SourceOne Family Software (excluding SourceOne eDiscovery)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
SRDF Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Storage Analytics Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
Storage Resource Management Suite	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Symmetrix DMX Enginuity (operating environment software)	3 years; Premium	Premium	None EMC will perform the installation of software updates
Symmetrix DMX Family Equipment (excluding Symmetrix VMAX)	3 years; Premium	Premium	None
Symmetrix Management Console Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Symmetrix Manager Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Symmetrix Optimizer Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
Symmetrix VMAX Cloud Edition	1 year; Limited	Premium	None
Symmetrix VMAX/VMAXe Enginuity (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None EMC will perform the installation of software updates
Symmetrix VMAX/VMAXe Family Equipment (operating environment licensed separately)	3 years; Premium	Premium	Disk drives

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
Telestream Flip Factory Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	None
TimeFinder Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
VFCache	3 years; Enhanced	Premium, Enhanced	VFCache PCIe card
ViPR	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
ViPR SRM	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
VMAX 10K File	3 years, Enhanced	Premium, Enhanced	Power supply, UltraFlex I/O module, SFP transceiver, management module
VMAX NAS Gateway with VNX VG10 or VNX VG50 Data Movers	3 years, Enhanced	Premium, Enhanced	Power supply, UltraFlex I/O module, SFP transceiver, management module
VNX CA	3 years, Enhanced	Premium, Enhanced	Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module
VNX F	1 year, hardware only; Limited Warranty Software (VNX OE) – see below	Premium, Enhanced	Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module
VNX OE (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
VNX optional Software products	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
VNX VG2 VNX VG8 VNX VG10 VNX VG50	3 years, Enhanced	Premium, Enhanced	Power supply, UltraFlex I/O module, SFP transceiver, management module
VNX5100	3 years, Enhanced	Premium, Enhanced	Disks, power supply, standby power supply, SFP transceiver, link control card
VNX5150	3 years, Basic	Premium, Enhanced	Disks, power supply, standby power supply, SFP transceiver, link control card
VNX5200 VNX5400 VNX5600 VNX5800 VNX7600 VNX8000	3 years, Enhanced	Premium, Enhanced	Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module
VNX5300 VNX5500 VNX5700 VNX7500	3 years, Enhanced	Premium, Enhanced	Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module
VNXe OE (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200)	None
VNXe optional Software products	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200)	None

Product	Standard Warranty	Available Support Options	Designated Customer- Replaceable Units (CRUs)*
VNXe3100, VNXe3150 and VNXe3200	3 years, Basic	Premium, Enhanced, Basic	Disk, power supplies (DAE and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD
VNXe3300	3 years, Enhanced	Premium, Enhanced	Disk, power supplies (DAE and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD
VNX-VSS OE (operating environment software for VNX-VSS)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced, Basic	None
VNX-VSS100	3 years, Limited	Enhanced, Basic	Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module
VPLEX Equipment	3 years, Premium	Premium	None
VPLEX Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None EMC will perform the installation of software updates
VSPEX Blue	1 year, hardware only; Limited	Premium, Enhanced, Basic	Power supply
Watch4Net	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	None
Woodwing Smart Connection Enterprise Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	None
xPression Family Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
XtremIO Equipment	3 years; Limited	Premium	None
XtremIO SW Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None
XtremSF	3 years or maximum endurance reached, whichever occurs first; Basic. Replacement of server flash PCIe cards that have reached their maximum endurance is not included. Contact EMC or an authorized EMC partner to purchase a replacement when maximum endurance has been reached. Refer to the XtremSF user guide for additional information regarding maximum endurance.	Premium, Enhanced, Basic	XtremSF PCIe card
XtremSW Cache	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	None
XtremSW Suite	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	None
z/OS Storage Manager Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	None

*** Customer Replaceable Units (CRUs):**

CRUs are specific assemblies, components, or individual parts of designated EMC equipment that the customer is authorized by EMC to self-replace. In the event of a failure or technical issue, the customer may remove and replace a CRU by using EMC-provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs must be serviced and/or replaced by EMC or an EMC authorized service partner.

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EMC LIMITED WARRANTY

The following chart lists the service features of Limited Warranty provided under EMC's standard warranty and/or maintenance terms.

Limited Warranty is available for EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as including Limited Warranty during the applicable warranty period.

SERVICE FEATURE	DESCRIPTION	LIMITED SUPPORT □ COVERAGE DETAILS
GLOBAL TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface on a 24X7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC Onsite Response as described below.	Included for Equipment only. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: Two local business hours; on a 9x5 basis Severity Level 2: Four local business hours; on a 9x5 basis Severity Level 3: Eight local business hours; on a 9x5 basis Severity Level 4: 12 local business hours; on a 9x5 basis
ONSITE RESPONSE	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary.	Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing.
REPLACEMENT PARTS DELIVERY	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement parts will be shipped to Customer for next local business day delivery of replacement parts. Local country shipment cut-off times may impact the same day/next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.
RIGHTS TO NEW RELEASES OF SOFTWARE	EMC provides the rights to new Software Releases as made generally available by EMC	Not included.
INSTALLATION OF SOFTWARE RELEASES	EMC will perform the installation of new Software Releases.	Not included. Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).

24x7 REMOTE MONITORING AND REPAIR	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Not included.
24x7 ACCESS TO ONLINE SUPPORT TOOLS	Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.	Included.

***Severity Levels:**

- **Severity 1 □ Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2 □ High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3 □ Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4 □ Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

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**ATTACHMENT B
GOVERNMENT PRICE LIST**

INSTRUCTIONS:

To view the Government Price List for this contract, please follow the below URL:

www.ecamerica.com

Then select the URL for GS-35F-0511T, and then the specific manufacturer. The Government Price List for that manufacturer is found under the "Contract Vehicles, Pricelists & Terms" section.