



AGENDA REPORT

MEETING DATE: September 26, 2018

PREPARED BY: Jessica Contreras,
IT Operations
Supervisor

DEPT. MANAGER: Wendy Flynn

DEPARTMENT: City Manager's Office –
Information Technology

CITY MANAGER: Karen P. Brust

SUBJECT:

Authorization to procure Cisco networking and phone equipment.

RECOMMENDATION:

That City Council take the following actions:

1. Ratify the procurement of Cisco hardware and annual support renewals in the amount of \$50,624 for FY 2017-18 using California Multiple Award Schedules (CMAS) General Services Administration (GSA) (GS-35F-0511T) Schedule 70 contract pricing.
2. Authorize the procurement of Cisco hardware and annual support renewals in an amount of \$164,503 in FY 2018-19, and authorize anticipated Cisco hardware and annual support renewals in amounts of \$160,000 in FY 2019-20; \$175,000 in FY 2020–21; and \$190,000 in FY 2021-22 using CMAS - GSA (GS-35F-0511T) Schedule 70 contract pricing.
3. Authorize participation in CMAS - GSA (GS-35F-0511T) Schedule 70 in a total amount not to exceed \$740,127 from December 21, 2017 through June 26, 2022.

STRATEGIC PLAN:

This item is related to the Organizational Effectiveness focus areas of the Strategic Plan. By participating in cooperative purchasing agreements, the City joins with other public agencies to leverage volume pricing for cost savings. The price discounts and time savings that result from using an already completed solicitation process and contract are in the City's best interest.

FISCAL CONSIDERATIONS:

The fiscal impact associated with the actual FY 2017-18 expenditures totaled \$50,624. Budgeted expenditures for FY 2018-19 are \$164,503 and funding is appropriated in the FY 2018-19 IT operating budget, and IT Work Project WC18E. Anticipated expenditures for: FY 2019-20 are \$160,000; FY 2020-21 are \$175,000; and FY 2021-22 are \$190,000. Costs beyond FY 2018-19 will be requested in upcoming budget cycles.

BACKGROUND:

The City of Encinitas has standardized on Cisco computer networking and phone equipment. Networking equipment is used to route network traffic between City facilities, enabling devices on the network, such as computers, servers, and printers to communicate with each other. Similarly, Cisco voice over internet protocol (VOIP) equipment is used to leverage the Cisco networking equipment to carry voice traffic over the City network. The Traffic Division in the Development Services Department has also standardized on Cisco equipment for routing traffic data. Annually, network and phone hardware is systematically replaced and upgraded to ensure secure access to computer services according to a recommended hardware lifespan defined by the Institute of Electrical and Electronics Engineers (IEEE).

Pursuant with the Purchasing Policy's acceptable alternative purchasing methods (PC01.V.C Cooperative Purchases), the City may participate in purchases and contracts established by other public agencies, provided the cooperative agreement was established following a competitive bid process.

CMAS offers a wide variety of information technology products and services at prices which have been assessed to be fair, reasonable and competitive. Under CMAS, GSA establishes contracts with thousands of businesses to ensure cost savings and obtain the best value for technology products, services and solutions. The duration of the CMAS - GSA (GS-35F-0511T) contract is June 27, 2007 through June 26, 2022 (Attachment 1). The City will potentially participate from December 21, 2017 through June 26, 2022.

ANALYSIS:

Staff recommends purchasing the following Cisco hardware and annual support renewals in FY 2018-19 under the CMAS-GSA cooperative purchase agreement (GS-35F-0511T) to replace critical networking and telecommunications equipment that has reached end of life and to receive security hardware and software updates for existing hardware:

Item	FY 19
Cisco Smartnet	25,000
Routers / Switches (LAN) 1GB	86,000
Phone replacements	12,000
Routers (WLAN)	5,743
Meraki	7360
VOIP (DataLink)	24,500
Ironport	3,900
TOTAL	164,503

In addition, staff is standardizing on a method in which a not-to-exceed amount the City projects to spend over the life of a specific cooperative purchase agreement is identified and taken to Council. Staff is also asking Council to ratify previous expenditures made against the cooperative purchase agreement since it had expenditures under \$100,000 approved before taking it to Council.

ENVIRONMENTAL CONSIDERATIONS:

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a "project" under Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

This item does not relate to the City's Climate Action Plan.

ATTACHMENTS:

1. California Municipal Award Schedules (CMAS) General Services Administration (GSA) cooperative purchase agreement (GS-35F-0511T)

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 # 3394, dated August 6, 2018.*



Advantage![®]
www.gsaadvantage.gov

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

**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

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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 # 3394, dated August 6, 2018.

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/Spare 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
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		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 it's 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?”	<ul style="list-style-type: none"> • 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?”	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • TFA 5 – Manage Network Access Controls
4. Manage “What is happening on the network?” for MNGEVT	<ul style="list-style-type: none"> • TFA 10 – Prepare for Contingencies and Incidents • TFA 11 – Respond to Contingencies and Incidents

4. Manage "What is happening on the network?" for DBS	<ul style="list-style-type: none"> ● 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	<ul style="list-style-type: none"> ● 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.	Mesosphere
Adobe Systems, Inc.	Micro Focus Software
AINS, Inc.	Mmodal
Allied Telecom Group, LLC	MobileIron, Inc.
Appian Corporation	Multivista Franchise Systems, LLC
Aruba Networks	NEC Corporation of America
Attivo Networks, Inc.	NetApp, Inc.
Authentic8	NetScout Systems, Inc.
Avizia	New Net Technologies, Inc.
Barracuda Networks, Inc.	Northrop Grumman Systems Corporation
BlueCat Networks (USA), Inc.	NowSecure
BMC Software Inc.	Nutanix
Brandes Associates, Inc.	One Identity LLC
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.
Checkmarx	Proofpoint, Inc.
Cirrusworks	Prosoft Systems
Cisco Systems, Inc.	Pulse Secure
Cisco WebEx, LLC	Puppet Labs
Coho Data	Qualtrics, LLC
CommVault Systems, Inc.	Red Hat, Inc.
Cybersponse	RedOwl Analytics, Inc.
Cyziv, LLC	Riverbed Technology, Inc.
Docker, Inc.	RSA Security
Eccentex	SAP NS2
ElasticSearch Federal, Inc.	SAP Public Services, Inc.
Elemental Technologies	SDL Government
EMC Corporation	Seceon Inc.
Enterasys Networks, Inc.	Secure Channels Inc.
Extreme Networks, Inc.	Siemens Industry, Inc.
Forcepoint LLC	Sunview Software, Inc.
Fortinet, Inc.	Syferlock Technology Corporation
Fujitsu Network Communications, Inc.	SyncDog
GitLab	Symantec
Globalscape	Tanium
Guidance Software	Tenable
Gupta Technologies	Thycotic Software
HaiVision	TIBCO Software Federal, Inc.
Hewlett Packard Enterprises	Unitrends
Hirevue	Varonis Systems Inc.
Infinera Corporation	VBrick Systems, Inc.
Intercede Group	Vectra Networks, Inc.
Ivanti	Veeam Software Corporation
KBZ Communications, Inc.	Veriato
Kony, Inc.	Wynyard
Litera	X1 Discovery, Inc.
Lookingglass Cyber Solutions Inc.	Xirus
Lumeta	Yubico
McAfee	ZeroFox, Inc.

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.

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

1. **Scope.** This Rider and the attached Adobe, 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 OGP 4800.2I, 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.

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

ADOBE SYSTEMS, INC.

ADOBE SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

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 12212 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.

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.

2. 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 Federal law, including but not limited to all intellectual property laws without regard to the Dispute Resolution Process.

3. 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.

4. 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.

5. 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 in good faith reasonably 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)(8), 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.

6. 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.

7. Governing Law: The License Agreement and this Amendment shall be governed by the Federal 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 hereby deleted.

8. 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. §§ 7101-7109. GSA and Ordering Activity expressly acknowledge that Adobe shall have standing to bring such claim under the Contract Disputes Act.

9. 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. §§ 7101-7109, 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.

10. 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(1); 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.

11. **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 and subject to the restrictions on advertising in GSAR 552.203-71, such use of the name or logo of any U.S. Government entity is prohibited.

12. **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.

13. **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. Adobe 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.

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:
 - 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

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 of 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 bleftin@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.

- 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.

- I. "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 (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
- (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.

- 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
- ONSE: 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.

- 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.

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Defining a subclass of a class defined by the Library is deemed a mode of using an interface provided by the Library.

A "Combined Work" is a work produced by combining or linking an Application with the Library. The particular version of the Library with which the Combined Work was made is also called the "Linked Version".

The "Minimal Corresponding Source" for a Combined Work means the Corresponding Source for the Combined Work, excluding any source code for portions of the Combined Work that, considered in isolation, are based on the Application, and not on the Linked Version.

The "Corresponding Application Code" for a Combined Work means the object code and/or source code for the Application, including any data and utility programs needed for reproducing the Combined Work from the Application, but excluding the System Libraries of the Combined Work.

1. Exception to Section 3 of the GNU GPL

You may convey a covered work under sections 3 and 4 of this License without being bound by section 3 of the GNU GPL.

2. Conveying Modified Versions

If you modify a copy of the Library, and, in your modifications, a facility refers to a function or data to be supplied by an Application that uses the facility (other than as an argument passed when the facility is invoked), then you may convey a copy of the modified version:

- a) under this License, provided that you make a good faith effort to ensure that, in the event an Application does not supply the function or data, the facility still operates, and performs whatever part of its purpose remains meaningful, or
- b) under the GNU GPL, with none of the additional permissions of this License applicable to that copy.

3. Object Code Incorporating Material from Library Header Files

The object code form of an Application may incorporate material from a header file that is part of the Library. You may convey such object code under terms of your choice, provided that, if the incorporated material is not limited to numerical parameters, data structure layouts and accessors, or small macros, inline functions and templates (ten or fewer lines in length), you do both of the following:

- a) Give prominent notice with each copy of the object code that the Library is used in it and that the Library and its use are covered by this License.
- b) Accompany the object code with a copy of the GNU GPL and this license document.

4. Combined Works

You may convey a Combined Work under terms of your choice that, taken together, effectively do not restrict modification of the portions of the Library contained in the Combined Work and reverse engineering for debugging such modifications, if you also do each of the following:

- a) Give prominent notice with each copy of the Combined Work that the Library is used in it and that the Library and its use are covered by this License.
- b) Accompany the Combined Work with a copy of the GNU GPL and this license document.
- 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.
- d) Do one of the following:
 1. Convey the Minimal Corresponding Source under the terms of this License, and the Corresponding Application Code in a form suitable for, and under terms that permit, the user to recombine or relink the Application with a modified version of the Linked Version to produce a modified Combined Work, in the manner specified by section 6 of the GNU GPL for conveying Corresponding Source.
 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.)

5. Combined Libraries

You may place library facilities that are a work based on the Library side by side in a single library together with other library facilities that are not Applications and are not covered by this License, and convey such a combined library under terms of your choice, if you do both of the following:

- 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.
- b) Give prominent notice with the combined library that part of it is a work based on the Library, and explaining where to find the accompanying uncombined form of the same work.

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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.

Feedback

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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Rights You Grant to Authentic8

By submitting your credentials for third party websites to Authentic8, you hereby authorize Authentic8 to use, store and submit such credentials on your behalf, log into such third party websites on your behalf and to configure the Authentic8 Service so that it is compatible with such third party websites. Authentic8 may use, store and submit such credentials on your behalf, but only to the extent necessary to provide the Authentic8 Service to you. You represent and warrant that you are entitled to submit such credentials to Authentic8 for this purpose, without any obligation by Authentic8 to pay any fees or other limitations. YOU ACKNOWLEDGE AND AGREE THAT WHEN AUTHENTIC8 ACCESSES THIRD PARTY WEBSITES, AUTHENTIC8 IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF, OR ON BEHALF OF, ANY THIRD PARTY. You understand and agree that the Authentic8 Service is not sponsored or endorsed by any third party websites which are accessible through the Authentic8 Service.

Software

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.

Conditioned upon your compliance with the terms and conditions of these Terms and during the trial period and term of your subscription to use the Authentic8 Service only, Authentic8 grants you a non-exclusive and non-transferable license for a single user to use the executable form of the Authentic8 App on a computer owned or controlled by you, solely for your personal, non-commercial purposes, as described herein. Authentic8 reserves all rights not expressly granted to you in this Agreement. The license to the Authentic8 App granted under these Terms remains in effect unless earlier terminated in accordance with these Terms. 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.

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.

Payment Terms

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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.

Ownership

The Authentic8 Service is protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, Authentic8 and its licensors exclusively own all right, title and interest in and to the Authentic8 Service, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Authentic8 Service.

User Content

Users may have the ability to post, upload, publish, submit or transmit text, graphics, images, information or other materials to be made available through the Service ("User Content"). By making available any User Content through the Service, you hereby grant to Authentic8 a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to

use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Content only on, through or by means of the Service. Authentic8 does not claim any ownership rights in any such User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Service. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all User Content that you make available through the Service or you have all rights, licenses, consents and releases that are necessary to grant to Authentic8 the rights in such User Content, as contemplated under these Terms; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Authentic8's use of the User Content (or any portion thereof) on, through or by means of the Service will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, 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:	<ul style="list-style-type: none"> \$__ 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:	<ul style="list-style-type: none"> 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, NONINFRINGEMENT 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.

- 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.

- 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.

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:
 - 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

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.

- 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 to Discloser's 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
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 manufacture 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.

Brandes Associates, Inc.
9220 Kimmer Drive
Suite 175
Lone Tree, CO 80124

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

1. **Scope.** This Rider and the attached Brandes Associates, 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 4800.21, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), 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 – BRANDES ASSOCIATES

1. DEFINITIONS.

1.1 AET is an operating Division of Brandes Associates, Inc., a California Corporation.

1.2 "Affiliate" means, for either Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party, where "control" means the power to direct the management and policies of an entity, whether through majority ownership of voting securities, by contract, or otherwise.

1.3 "Authorized User" will have the meaning set forth in Section 6.3.

1.4 "Confidential Information" means any material or information relating to a Party's research, development, products, product plans, services, licensees, licensee 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 Licensed Software and any other software or databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of AET will constitute Confidential Information of AET.

1.5 "Cover Page" means AET standard form of cover page to which these Master Terms are attached.

1.6 "Delivery Date" has the meaning set forth in Section 8.1.

1.7 "Demonstration Version" means a version of the Licensed Software, so identified, to be used only to review, demonstrate and evaluate the Licensed Software for a limited time period.

1.8 "Documentation" means the user documentation related to the use and operation of the Licensed Software, but only to the extent that AET, in its sole discretion, makes such documentation generally available for commercial distribution. All Documentation will be provided in English.

1.9 "Licensed Software" or "Software" will mean the object code version of any AET software, including any third-party code contained therein, and related documents. JavaScript in the channel transformers is also considered object code for the purposes of this paragraph.

1.10 "Marks" means the trade names, trade dress, trademarks, service marks, commercial symbols, domain names, brands, designs, logos and/or any other marks used by AET to denote AET as the source of its products and services.

1.11 Reserved.

1.12 "Pre-commercial Release or Beta Version" means test copies of the software, so identified, released prior to the fully tested version ready for commercial use.

1.13 "Services Agreement" means any addendum to this Agreement, if any, and may include, without limitation, an Order, AET standard form of Maintenance and Support Services Agreement, and/or Professional Services Agreement.

2. GENERAL.

These Master Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contain the general terms and conditions governing the general legal relationship between AET and Ordering Activity relating to the mutual covenants and obligations of the Parties set forth in the attached. AET provision of licenses to its proprietary software and the provision of services related to such licenses are subject to the terms and conditions contained in this Agreement. However, Ordering Activity acknowledges and understands that these Master Terms do not, absent payment of any applicable fees described herein impose any obligation upon AET to provide any such licenses or services other than those set forth in these Master Terms.

3. LICENSE.

Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and compliance with the terms and conditions of the applicable order, AET hereby grants Ordering Activity, a limited, non-exclusive, worldwide, non-transferable, license (for so long as Ordering Activity is in compliance with the terms of this Agreement, including, without limitation, the order) to use for internal business purposes the executable code version of the Licensed Software, provided any copy of the Licensed Software must contain all of the original proprietary notices, in accordance with the terms and conditions contained herein. Ordering Activity may not modify the Licensed Software or disable any licensing or control features of the Licensed Software. Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order AET hereby grants to Ordering Activity a non-exclusive, non-transferable, non-sublicenseable right and license during the term of this Agreement to make copies of the Documentation provided by AET, solely for Ordering Activity's internal use in connection with the exercise of rights granted in Section 3. Ordering Activity acknowledges that no right is granted to modify, adapt, translate, publicly display, publish, create derivative works or distribute the Documentation.

4. ADDITIONAL LICENSE PROVISIONS

4.1 General Restrictions. Except as otherwise expressly provided in this Agreement, Ordering Activity will not copy, modify, create derivative works of, or translate the Licensed Software, in whole or in part, nor resell, lease, lend, grant a security interest in, or distribute the Licensed Software to third parties.

4.2 Reverse Engineering. No license is given to Ordering Activity for the source code to the Licensed Software. Ordering Activity agrees that it, directly or indirectly, will not reverse engineer, decompile, modify, or prepare derivative works of the Licensed Software.

4.3 Authorized Use. Subject to the terms and conditions of this Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order, AET hereby grants, and Ordering Activity accepts, the right and license to install and use the Licensed Software on one computer. Such installation is called an "instance". Ordering Activity acknowledges and agrees that, as between Ordering Activity and AET, Ordering Activity will be responsible for all acts and omissions of its Users, and any act or omission by an Authorized User, which, if undertaken by Ordering Activity, would constitute a breach of this Agreement.

4.4 Sublicenses. Without the prior written consent of AET, Ordering Activity will not sublicense or permit the sublicense of any of the rights granted to Ordering Activity by AET in this Agreement.

4.5 Reserved Rights. AET reserves all rights not expressly granted under this Agreement.

5. RESERVED

6. DELIVERY; ENHANCEMENTS AND UPDATES

6.1 Enhancements and Updates. AET may, at any time, but is not obligated to, provide Ordering Activity with upgrades, enhancements or updates of the Licensed Software. The terms of this Agreement will apply to any upgrade, enhancement, or update of the Licensed Software provided by AET in its sole discretion from time to time.

6.2 Professional Services; Training and Support. Upon payment of the applicable fee(s) in accordance with the GSA Pricelist, Ordering Activity will be entitled to receive the services described herein. Ordering Activity may request that AET perform certain installation, configuration, training, or other related services (collectively, "Professional Services") for an additional fee pursuant to the terms of the Professional Services Agreement set forth herein.

7. ADDITIONAL OBLIGATIONS OF THE PARTIES

7.1 Trademark License. No right, license, or interest to any trademark owned by AET is granted hereunder, and Ordering Activity agrees that no such right, license, or interest will be asserted by Ordering Activity with respect to such trademark. Ordering Activity will not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels on the Licensed Software.

7.2 Third Party Restrictions. Ordering Activity will undertake all measures necessary to ensure that its use of the Software and the Documentation complies in all respects with any contractual or other legally binding obligations of AET to any third party, provided that AET has notified Ordering Activity with respect to any such obligations. Ordering Activity will not enter into any contractual relationship or other legally binding obligation with any third party which will have the purpose or effect of encumbering the use by AET of the Licensed Software or the Documentation.

8. PROPRIETARY DATA

8.1 Acknowledgment. Ordering Activity acknowledges that (i) the Licensed Software provided by AET pursuant to this Agreement is the sole and exclusive property of AET; (ii) the Licensed Software provided by AET pursuant to this Agreement is entitled to protection under applicable copyright and other intellectual property laws; (iii) the Licensed Software provided by AET pursuant to this Agreement constitutes valuable assets, trade secrets and proprietary rights of AET; (iv) neither legal nor equitable title to the Licensed Software passes to Ordering Activity under the terms of this Agreement; (v) any information with respect to the Licensed Software provided by AET is Confidential Information and is to be reasonably protected by Ordering Activity, whether or not any portion of the Licensed Software have been copyrighted or patented; and (vi) unless covered under a separate written agreement between AET and Ordering Activity, ownership of all modifications and enhancements to the Licensed Software will remain solely with AET.

8.2 Protection. Ordering Activity agrees that it will not at any time permit the Licensed Software provided by AET to be used, examined, reviewed or inspected by others during the term of this Agreement, other than by the employees or agents of Ordering Activity, by auditors or governmental agencies as required by law, as otherwise allowed under the provisions of this Agreement, or by persons authorized by AET in writing.

8.3 Restriction. Ordering Activity will not modify, adapt, translate, copy, duplicate, print or reproduce the Licensed Software or any part or portion thereof; except that Ordering Activity may make a limited number of copies of the Licensed Software as reasonably necessary to exercise its rights and comply with its obligations under this Agreement.

9. WARRANTIES

9.1 Ownership. AET warrants that it is the owner of, or is otherwise licensed to grant the rights granted hereunder in, the Licensed Software, and has full legal rights to grant the rights granted herein. AET further warrants and represents that (i) it is not under, and will not assume, any contractual obligation that prevents AET from performing its obligations or conflicts with the rights and licenses granted in this Agreement; and (ii) the Licensed Software does not directly or indirectly infringe any publicity, privacy or intellectual property rights of a third party including, to AET knowledge, any patents or patent applications. AET warrants that the LICENSED SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with LICENSED SOFTWARE written materials accompanying it.

10. RESERVED

11. GENERAL

United States Government Rights. Consistent with FAR 12.211 and 12.212, Commercial Computer Software, Computer Software Documentation, and Technical Data for Commercial Items, in the event that Ordering Activity is the United States Government (or any agency or department thereof), the Licensed Software is licensed to the U.S. Government under vendor's standard commercial license.

EXHIBIT A

AET MAINTENANCE AND SUPPORT SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS

1: PRODUCT:

This Support Agreement applies only to the software product ("AET Software"), which has been licensed by AET to Ordering Activity pursuant to the Master License and Services Agreement (the "License Agreement").

2: ORDERING ACTIVITY CONTACTS

2.1. The address for Ordering Activity and Ordering Activity's "Contact" person are provided by Ordering Activity to AET at the time of entering into the License Agreement and incorporated by reference herein.

The Contact will be a member of Ordering Activity's technical staff designated to carry out all contacts with AET pursuant to this Support Agreement.

3: RESERVED

4: MAINTENANCE AND SUPPORT SERVICES

During the term of this Support Agreement, the maintenance and support services ("Maintenance and Support Services") to be provided to Ordering Activity under this Support Agreement are:

- 4.1. Incident Reporting. AET will have technical support personnel available as specified herein. Ordering Activity will receive an initial response to inquiries as specified herein. An "Incident" is a failure of the AET Software to conform in all material respects to its functional specifications as then published by AET, provided that a reported Incident will not be deemed to be an Incident unless: (i) AET is able reproduce it under the same or similar conditions with reasonable effort on a supported platform; (ii) it does not result from misuse or improper use of the AET Software by Ordering Activity; and (iii) the AET Software has not been modified.
- 4.2. Error Correction. AET will use commercially reasonable efforts to create Error Corrections as specified herein. An "Error Correction" is defined as a software modification or addition, which when made or added to the AET Software or its documentation establishes material conformity of the AET Software with its functional specifications. Error Corrections include, without limitation, changes in the documentation, procedures or routines that when used in the regular operation of the AET Software eliminates the practical adverse effect on Ordering Activity of the nonconformity.
- 4.3. Enhancements. An "Enhancement" is defined as extensions and other changes that are logical improvements to the AET Software and that AET makes generally available to Ordering Activities receiving Maintenance and Support Services. Each Enhancement will include any Error Corrections issued since the previous Enhancement. Enhancements do not include (i) new software products that are generally made available as a separate, price-listed options or additions to the AET Software or upgrades to new platforms or (ii) custom program modifications or requests for new functionality that are not made generally available to Ordering Activities receiving Maintenance and Support Services. AET will notify the Contact by e-mail when any Enhancements to the AET Software are made available to customers receiving Maintenance and Support Services. On request, AET will ship or FTP one copy of the Enhancement to the Contact at no additional cost, provided however, that AET reserves the right to require instead that the Contact download any or all Enhancements from AETs designated website.
- 4.5. Technical Support. During the term of this Support Agreement, AET will provide Ordering Activity with support to provide assistance with technical issues relating to the installation, operation and functionality of the AET Software as specified within. This support specifically, but without limitations, does not include assistance with Ordering Activity's input errors, issues related to any training content of the AET Software, issues related to Ordering Activity's hardware, or other problems related to deployment of the AET Software in conjunction with other software or operating systems.

5: LIMITATION ON MAINTENANCE AND SUPPORT SERVICES

- 5.1. AET is obligated to provide Maintenance and Support Services only with respect those Releases (as defined below) as specified herein. AET may refuse to provide Maintenance and Support Services if Ordering Activity fails to install all Error Corrections or Enhancements within sixty (60) days of receipt of the Error Correction or Enhancement.
- 5.2. AET will have no obligation to provide any Maintenance and Support Services with respect to AET Software modified by Ordering Activity.
- 5.3. This Support Agreement, specifically but without limitation, does not obligate AET to provide: (i) project management; (ii) personnel management; (iii) application design or development; (iv) performance of Maintenance and Support Services on-site; (v) consulting, training or other support services relating to software other than the AET Software; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or reentry of data lost for any reason whatsoever; (viii) performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Ordering Activity's discretion; or (ix) delivery of improvements to AET Software requested by Ordering Activity or prepared on a customized basis for Ordering Activity.

6: RELEASES AND OWNERSHIP

- 6.1 All rights, titles and interests in and to any programs, systems, data or materials used or produced by AET in the performance of Maintenance and Support Services, including but not limited to, Error Corrections, Enhancements or other releases ("Releases"), will remain the sole property of AET. All Releases received by Ordering Activity from AET will become part of the AET Software and will be governed by the terms of the License Agreement. AET reserves the right to define the addition of new functionality or other elements as a new product and not a Release. AET is under no obligation to develop new Releases. All Releases, including all copyright interests and intellectual property, will remain the sole property of AET regardless of whether Ordering Activity or its employees or contractors will have contributed to the conception or the Release, joined in the effort of its development or paid AET for creation of it.

7: LIMITATION OF WARRANTY

7.1 AET warrants that the MAINTENANCE AND SUPPORT SERVICES will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with MAINTENANCE AND SUPPORT SERVICES written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, AET MAKES AND ORDERING ACTIVITY RECEIVES, NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE MAINTENANCE AND SUPPORT SERVICES TO BE RENDERED OR THE RELEASES TO BE RECEIVED HEREUNDER, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT ARE EXPRESSLY EXCLUDED; ALL RELEASES ARE PROVIDED "AS IS." AET DOES NOT WARRANT THAT THE MAINTENANCE AND SUPPORT SERVICES HEREUNDER WILL MEET THE NEEDS OF ORDERING ACTIVITY OR PERMIT THE AET PROGRAMS TO OPERATE WITHOUT PROBLEMS, ERRORS OR INTERRUPTIONS.

8: RESERVED

APPENDIX A: AET SERVICE LEVEL DESCRIPTION

Terminology and Definitions

Response Time: Response time is defined, as the time required for the assigned AET support person to call the initiator of the Incident and begin work on the recorded Incident.

Resolution Time: AET will use its best efforts to provide a workaround or fix once the Incident has been reproduced by AET or a AET Software defect has been identified. The time required to accomplish this is defined as Resolution Time.

Incident Class: Incident classes are identified below:

Level 1: The AET Software is down or severely impacted, or Ordering Activity's data is lost or destroyed. No reasonable workaround is currently available (for example, system crashes or panics, or corrupted data).

Level 2: The AET Software is moderately affected. No workaround is currently available or the workaround is unreasonably cumbersome to use.

Level 3: The issue with the AET Software is not critical and the issue does not hinder normal operation, or a reasonable workaround is available. Level 3 also includes: general questions, comments or errors in documentation, which should be recorded but has no impact on daily work. Notwithstanding the foregoing, if an Incident is reported to AET via email, the Incident will be classified as Level 3.

Product Manager: AET's Product Manager will be the primary contact for Ordering Activity for new business requests and the facilitation of service support performance reviews. AET reserves the right to change the Manager at any time without notice.

Service Levels

AET standard support services program includes the following:

1. Standard Support Hours are Monday through Friday from 8:00 AM to 8:00 PM (EST), excluding holidays and weekends.
2. AET is available to open new support cases via telephone, email, or online helpdesk during the Standard Support Hours.
3. For the most current Releases of the AET Software, AET provides Error Correction or workarounds required for the AET Software to conform to functional specifications as defined in the "APPENDIX B: AET SOFTWARE LIFECYCLE AND SUPPORT" below.
4. AET provides new Releases and Enhancements for the AET Software covered under Ordering Activity's maintenance agreement at no additional fee.
6. AET provides training for new features covered under Ordering Activity's maintenance agreement for a fee at the Licensee's Site or AET Site.

Response and Resolution Times

Incident

Class Response Resolution

Level 1 2 hours

Upon confirmation of receipt, AET begins continuous work on the Incident, provided that a Ordering Activity resource must be available at any time to assist with problem determination. AET will use its best efforts to provide a workaround or fix within 48 hours, once the Incident has been reproduced by AET or a AET Software defect has been identified. AET may at its sole discretion incorporate any fix(es) in future release(s) of the AET Software.

Level 2 8 business hours

Upon confirmation of receipt, AET will use its best efforts to provide a workaround or fix within 7 business days, once the Incident has been reproduced by AET or a AET Software defect is identified. AET may at its sole discretion incorporate any fix(es) in future Release(s) of the AET Software.

Level 3 24 business hours

AET will use its best efforts to provide a workaround or fix within 10 business days, once the Incident has been reproduced by AET or a AET Software defect is identified. AET may at its sole discretion incorporate any fix(es) in future Release(s) of the AET Software.

Key Licensee Processes

Incident Reporting

All incidents related to support can be logged by contacting technical support.

Technical Support can be contacted via the following methods:

1. Phone 1-888-326-8048
2. Email support@syndeogateway.com
3. Online Helpdesk: <https://www.syndeogateway.com:10021/servicedesk/customer/portal/2>

When contacting AET Technical Support via phone, email, or the online AET Helpdesk, a case is created with an associated priority. If a support case is created via the online helpdesk or over the telephone, customers may specify the case priority. If a case is created via email, the case priority will default to Level

3.

AET reserves the right to change the contact information described above at any time.

Escalation

If an incident is not resolved to Ordering Activity's reasonable satisfaction, the Incident may be escalated. Incident issues are to be escalated first to Product Manager, secondly to the Software Development Manager, and finally to the CTO.

TECHNICAL SUPPORT ESCALATION LIST

1. Phone 1-888-326-8048
2. Email support@syndeogateway.com
3. Online Helpdesk: <https://www.syndeogateway.com:10021/servicedesk/customer/portal/2>

First Level Escalation: Kenneth Taylor, Product Manager
Kenneth.Taylor@brandesassociates.com
Mobile: (916) 548-1001

Second Level Escalation: Tom Syp, Software Development Manager thomas.syp@brandesassociates.com
Mobile: (424) 652-1298

Third Level Escalation: John Long, CTO john.long@brandesassociates.com
Office: (805) 498-2915

AET reserves the right to change the contact information described above at any time.

New Business Introduction

To initiate a request for a new service or new product feature, please contact the Product Manager. The Product Manager will document the high-level requirements, develop a cost estimate for delivering the system functionality or service, and develop a timeline for system's implementation.

APPENDIX B AET SOFTWARE LIFECYCLE AND SUPPORT

SOFTWARE RELEASE TERMINOLOGY

Term	Description
Release Numbering	AET uses a three-place numbering system to designate Releases of software. The format is XX.YY.ZZZ, where X indicates a major release, Y indicates a minor release, and Z indicates a maintenance release. An example would be release 3.2.19. Often in referring to general product versions and releases, the maintenance release is omitted. For example, both 3.2.19 and 3.2.20 may sometimes be referred to as release 3.2.
Maintenance Release	For the purpose of this support policy, a maintenance release is considered part of the main release. For example, 3.2.19 is supported as part of the 3.2 release.
Current Release (GA)	The most recent General Availability (GA) major and minor release combination of AET software is commonly known as the 'current release'.
GA-1 Release	The latest major/minor release combination to become generally available (GA) prior to the current release. For example, if the current release is 3.2, then GA-1 is 3.1.
GA-2 Release	The latest major/minor release combination to become generally available prior to the GA-1 release. Continuing the example above, if GA-1 is 3.1, then GA-2 is 3.0.
Full Support	Full support is provided to Ordering Activity based on the terms and conditions of the Maintenance and Support Agreement. This includes: Error Corrections as defined in Section 4.2 Enhancements as defined in Section 4.3 Workarounds Other modifications provided at no charge at AET sole discretion.
Limited Support	As a Release enters limited support (as described below), the following guidelines apply: New enhancements, error corrections, and/or workarounds will not be made to the Release. AET will direct customers to existing enhancements, error corrections and workarounds applicable to the reported case. AET may develop fixes for problems of high technical impact or business exposure for the customer at AET sole discretion. AET may direct customers to upgrade to a more current Release of the AET Software.
No Support	Product Releases that are no longer supported will not have any Error Correction or Enhancements

added. Ordering Activity

must upgrade to at least a Full
Support Release to bring the subscription current in order to receive
support under this Maintenance Agreement.

AET SOFTWARE LIFECYCLE AND SUPPORT

AET provides the following support for various releases of software:

AET Software Release	Level of Support
Current Release (GA)	Full Support
GA-1, GA-2	Limited Support
Releases prior to GA-2	No Support

APPENDIX C: AET PROFESSIONAL SERVICES AGREEMENT

1. ADDITIONAL DEFINITIONS. Certain capitalized terms used in this Professional Services Agreement, not otherwise defined above, shall have the meanings set forth or cross-referenced below. Capitalized terms used in this Professional Services Agreement that are not otherwise defined in this Professional Services Agreement have the meaning set forth in the Master Terms.

1.1 "Professional Services" has the meaning set forth in Section 2.1.

1.2 "Statement of Work" has the meaning set forth in Section 2.2.

2. PROFESSIONAL SERVICES

2.1 Professional Services. The parties anticipate that Ordering Activity may desire to engage AET to perform certain services in connection with the licenses or access rights granted to Ordering Activity by AET under separate Exhibits to this Agreement, including, by way of example, installation, configuration and/or training services. Subject to the terms and conditions set forth in this Professional Services Agreement, the underlying GSA schedule contract, schedule pricelist and applicable order, AET shall use commercially reasonable efforts to perform the services as set forth in Statements of Work (as defined below) separately executed by the parties (the "Professional Services"). AET shall perform the Professional Services in a professional manner in accordance with industry standards.

2.2 Issuance of Statements of Work. Ordering Activity may request that AET perform services by requesting proposed Professional Services. AET shall prepare draft statements of work as an exhibit to this Professional Services Agreement (each, a "Statement of Work"). Such Statement(s) of Work shall describe the fees, costs, and expenses payable by Ordering Activity in connection with the performance of such services. Ordering Activity shall promptly notify AET of its acceptance or rejection of such Statement of Work. Until the acceptance in writing of the proposed Statement of Work, AET shall have no obligation to perform the proposed Professional Services, provided that this Professional Services Agreement shall remain in full force and effect in accordance with Section 4.

2.3 Modifications. Ordering Activity may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to AET specifying the desired modifications. AET shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Ordering Activity, such modifications in the Statement of Work shall be performed under the terms of this Professional Services Agreement. Modifications in any Statements of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

3. PERSONNEL

3.1 Suitability. AET shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. AET may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2 Ordering Activity Responsibilities. Subject to Government security requirements, Ordering Activity shall make available in a timely manner at no charge to AET all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Ordering Activity required by AET for the performance of the Professional Services. Ordering

Activity shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Ordering Activity. Ordering Activity shall provide, at no charge to AET, office space, services and equipment (such as copiers, fax machines and modems) as AET reasonably requires to perform the Professional Services.

3.3 Nonsolicitation. Ordering Activity acknowledges and agrees that the employees and consultants of AET who perform the Professional Services are a valuable asset to AET and are difficult to replace. Accordingly, Ordering Activity agrees that, for a period of one (1) year after the termination or expiration of this Professional Services Agreement, it shall not knowingly solicit for hire (whether as an employee, independent contractor or consultant) any AET employee or consultant who performs any of the Professional Services. Such prohibitions shall not apply to employees or consultants who answer public advertisements, or who apply for employment with Ordering Activity without any solicitation.

4. PROPRIETARY RIGHTS. Unless otherwise expressly agreed in any particular Statement of Work, except to the extent that the same constitutes or embodies Ordering Activity's Confidential Information, ownership of all work product, developments, inventions, technology or materials provided under this Professional Services Agreement shall be solely owned by AET, subject to the usage rights granted to Ordering Activity under the relevant Statement of Work.

5. LIMITATION OF WARRANTIES AND LIABILITY. AET makes no representations or warranties under this Professional Services Agreement, and Ordering Activity acknowledges that this Professional Services Agreement is subject to all disclaimers and limitations or liability set forth in the Master Terms.

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'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 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:

Total Time of Availability = Total Time (24/7) – Scheduled Maintenance – Uncontrollable Outages

*% Availability = (Total Time of Availability – Unscheduled/Emergency Maintenance) * 100 / 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.

- 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.

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- 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 "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 COMMERCIALLY 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.

- 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.

- 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 Centrifly will provide maintenance and support services in accordance with Centrifly's standard support policies. You understand that Centrifly may update the software at any time. Such updates may be provided to you in due course, but Centrifly has no obligations to provide such updates to you. You may decide whether to install updates to the Software unless Contractor, through Centrifly 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 Centrifly 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 Centrifly'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 Centrifly Support is accessible through multiple channels.

Online

Centrifly'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.centrifly.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 Centrify 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 Centrify products licensed and covered by maintenance.

You can obtain the latest versions of Centrify software through our Online Customer Support Portal: www.centrify.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.

- 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 the end-point devices and/or 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	
<ul style="list-style-type: none"> • • • • 	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).

ATTACHMENT A – CHECKMARX

TERM SOFTWARE LICENSE AND SUPPORT AGREEMENT

1. DEFINITIONS.

- 1.1 “**Affiliate**” means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and “control” means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.
- 1.2 “**Authorized Contractor**” means a contractor who holds valid Named User Licenses purchased by Ordering Activity for the purpose of providing services to Ordering Activity.
- 1.3 “**Effective Date**” means the date set forth in the purchase order.
- 1.4 “**Fees**” means the Software license fees and applicable service fees charged by Licensor to Ordering Activity, as set forth in the GSA Schedule Pricelist and the purchase order.
- 1.5 “**License Term**” means the term of the Software license(s) purchased by Ordering Activity, as set forth in the purchase order.
- 1.6 “**License Type**” means the type of licenses (e.g., Named User, Node Locked) purchased by Ordering Activity.
- 1.7 “**M.U.S.**” has the meaning set forth in Section 3.1.
- 1.8 “**Quote**” means a valid quotation document provided by Licensor or an authorized reseller setting out the quantity and type of products and services purchased by Ordering Activity.
- 1.9 “**Software**” means the object code form of Licensor’s software programs for which Ordering Activity has purchased a license as set out in the purchase order, and all Enhancements and Updates provided to Ordering Activity during an active annual term license or M.U.S. subscription.

2.0 GRANT OF LICENSE.

- 2.1 **Grant.** Subject to the terms and conditions of this Agreement, the underlying GSA Schedule contract, and the purchase order, Licensor grants to Ordering Activity a limited, non-exclusive, non-transferable, non-subliceasable (except as provided in Section 2.3), license, during the License Term: (a) to utilize the Software and Documentation for internal use only, subject to the License Type limitations; (b) to make a reasonable amount of copies of the Documentation required for Ordering Activity’s internal use; and (c) to make a reasonable number of copies of the Software and Documentation for inactive backup and archival purposes only.
- 2.2 **Restrictions.** Ordering Activity may not: (a) use the Software in excess of the License Type restrictions; (b) attempt to circumvent any license restrictions or License Type limitations; (c) reverse engineer, decompile, disassemble or create derivative works of the Software or Documentation; (d) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend the Software or Documentation to any third party; (e) use the Software to provide code scanning or audit services to a third party, or make the Software available in a service bureau or any similar commercial time-sharing arrangement; (f) transfer, assign or permit the sharing of license keys or product codes to a third party; (g) make available to any third party any analysis of the results of the operation of the Software, including benchmarking results, without the express written consent of Licensor; or (h) otherwise provide access to the Software or the output generated by the Software to any individual who does not hold a valid Named User License.
- 2.3 **Use by Authorized Contractors.** Ordering Activity shall be permitted to permit use of the Software by Authorized Contractors by purchasing Named User licenses on behalf of Authorized Contractors who have a need to use the Software to fulfill contractual obligations to provide services to Ordering Activity. These Named User licenses may only be used by the Authorized Contractor in accordance with the terms and conditions set out in this Agreement: (a) for the benefit of Ordering Activity; and (b) to scan the code of Ordering Activity. The Authorized Contractor may not use the Software for the contractor’s own benefit or for the benefit of any other party. Ordering Activity shall remain responsible at all times for the use of the Software and compliance with all terms and conditions of this Agreement by Authorized Contractors.
- 2.4 **Audit and Enforcement Rights.** Licensor shall be entitled, up to one time per each twelve (12) month period during the License Term, commencing on the Effective Date, to request a Software license audit to verify compliance with this Agreement and the number and type of licenses purchased by Ordering Activity. Within thirty (30) days of

Licensor's written request, Ordering Activity shall conduct a diligent internal audit and shall provide Licensor with a written license compliance certification signed by a duly authorized officer of Ordering Activity, certifying the use of the Software during the specified audit period.

3.0 SUPPORT AND TRAINING.

3.1 Description of Support. Licensor will provide Software maintenance, upgrades and support ("M.U.S.") during the License Term in accordance with the service level agreement attached hereto as Exhibit A.

3.2 Expiration of Service Hours. All training and other professional services hours/credits ordered by Ordering Activity must be used within six (6) months of purchase.

4.0 RESERVED.

5.0 TITLE AND OWNERSHIP; PROPRIETARY NOTICES.

5.1 By Licensor. Licensor retains all right, title and interest in and to the Software and Documentation and all copies, improvements, enhancements, modifications and derivative works of the Software and Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. All express or implied rights to the Software and Documentation not specifically granted herein are expressly reserved to Licensor.

5.2 Proprietary Notices. Ordering Activity may not remove the copyright, trademark and other proprietary notices contained on or in the Software and the Documentation as delivered to Ordering Activity on all copies of such Software and Documentation.

6.0 LIMITED WARRANTY.

6.1 Limited Software Warranty. Licensor warrants to Ordering Activity that, for a period of thirty (30) days after initial delivery to Ordering Activity (the "**Warranty Period**"), the Software, when properly installed and used by Ordering Activity, will operate in substantial conformity with the functional specifications set out in the Documentation. If, during the Warranty Period, Ordering Activity determines that the Software does not comply with the above warranty, Ordering Activity shall provide Licensor with written notice documenting each such non-conformity. Within a reasonable time after receipt of Ordering Activity's notice, Licensor shall, at Licensor's sole discretion and as Ordering Activity's sole and exclusive remedy: (a) deliver to Ordering Activity a Workaround or correction of the non-conformity; (b) offer to Ordering Activity a similar software product with substantially the same functionality as the non-conforming Software; or (c) promptly terminate this Agreement and refund the amount of license fees paid by Ordering Activity for the non-conforming Software, less a reasonable pro-rated amount reflecting any actual use of the Software by Ordering Activity prior to the date of refund.

6.2 Warranty Limitations. The limited warranty set forth above in Section 6.1 shall not apply to the extent the Software: (a) is not used in accordance with the Documentation; (b) has been modified without Licensor's express authorization; (c) fails to function due to a malfunction of Ordering Activity's equipment; or (d) fails to function because of third party software (software and/or hardware), incorporated or integrated with, or used in connection with the Software which was not provided or approved by Licensor.

6.3 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 6.1, ALL SOFTWARE AND DOCUMENTATION IS PROVIDED ON AN "AS IS" BASIS. THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 IS THE EXCLUSIVE WARRANTY OFFERED BY LICENSOR AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE

EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE

REQUIREMENTS OF ORDERING ACTIVITY, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED AND/OR ERROR-FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE SOFTWARE WILL RENDER ORDERING ACTIVITY'S CODE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES, OR THAT THE SOFTWARE WILL DETECT ALL ERRORS OR VULNERABILITIES IN ORDERING ACTIVITY'S CODE.

6.4 Exclusive Remedy. THIS SECTION 6 STATES ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF LICENSOR FOR BREACH OF WARRANTY.

7.0 RESERVED.**8.0 RESERVED.****9.0 GENERAL PROVISIONS.**

9.1 Restricted Parties. Ordering Activity represents and warrants that it is not a "**Restricted Party**," which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a "**Prohibited Territory**") or (b) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Ordering Activity shall not distribute, transfer or permit access to any Licensor Software or Documentation to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

9.2 United States Government Rights in Commercial Off-the-Shelf Software. The Software and Documentation constitute

"commercial computer software," and "commercial computer software documentation" and "technical data" as defined in FAR Section 12.212.

Consistent with the applicable provisions of the applicable federal acquisition regulations, including but not limited to 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Software and Documentation are being licensed to U.S. Government end users only as commercial items and pursuant solely to the terms and conditions herein.

9.3 Add-Ons. Licensor or other third parties may make available optional add-ons, extensions, plug-ins or services intended to enhance the functionality of the Software (the "**Add-Ons**"). Such Add-Ons, if ordered by Ordering Activity, may be subject to additional Fees set forth on a separate purchase order.

EXHIBIT A**Section - MAINTENANCE, UPGRADES AND SUPPORT (M.U.S.)****1. DEFINITIONS.**

- (a) "**Bug**" means an error condition that causes the Software to fail to operate in substantial compliance with the Documentation.
- (b) "**Enhancement**" means a new version of the Software which Licensor makes generally available to its Ordering Activities who are eligible to receive support.
- (c) "**Normal Business Hours**" means Monday through Friday, 09:00 – 17:00, Ordering Activity's local time, excluding public holidays.
- (d) "**Resolution Time**" means the time elapsed until a Workaround or permanent solution to a Bug has been provided in accordance with the resolution timelines set out below, according to the severity classification.
- (e) "**Updates**" means a set of procedures or new program code that Licensor implements to fix Bugs.
- (f) "**Workaround**" means a temporary error correction or change in operating procedure allowing Ordering Activity to continue to use the Software until a long-term solution has been provided.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement above.

2. SUPPORT.

During the Term of the Agreement:

- (a) Licensor will provide technical support and assistance with respect to the Software, including: (i) clarification of functions and features; (ii) clarification of Documentation; and (iii) technical support and assistance in the operation of the Software. Licensor shall provide this general support only for the latest version of the Software and the one previous version.
- (b) Licensor shall provide support during Normal Business Hours via telephone and email to Ordering Activity's Support Contact Designee.

- (c) Bug fixes will generally be accomplished through the periodic release of Updates and Enhancements. Ordering Activity acknowledges that some Bug fixes will require Ordering Activity to update the Software to the then-current version, and Licensor shall not be required to provide Bug fixes, Enhancements or Updates for any Software version other than the then-current version.
- (d) Errors in the Documentation will be corrected by Licensor in its discretion.
- (e) Licensor shall not be responsible for providing support for matters not directly involving problems with the Software, such as Ordering Activity operations problems, database problems, interfaces to other systems, and third party products (software and/or hardware).
- (f) Licensor shall not be responsible to provide support for problems resulting from unauthorized modifications of the Software,

Software misuse, use of the Software in a manner other than described in the Documentation, or negligence on the part of the Ordering Activity or a third party outside of Licensor's control.

3. **RESPONSE AND RESOLUTION SCHEDULE.**

Ordering Activity will initially classify each Bug in the Software or error in the Documentation based on the following schedule, and thereafter report such Bug or error to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Ordering Activity; however the final classification of the priority level will be determined by Licensor in accordance with the table below:

PRIORITY LEVEL:	CRITERIA
Priority 1	<u>Fatal</u> : Bug preventing all use of the Software.
Priority 2	<u>Severe Impact</u> : Bug disabling major functions from being performed. This condition exists when the Software is partially inoperative, but is still usable by Ordering Activity and the impact is one of inconvenience.
Priority 3	<u>Minimal Impact</u> : Includes all other Bugs. This condition generally exists when the Software is usable and the problems consist of inconveniences or minor failures involving individual components of the system.

Upon receipt of Ordering Activity's service ticket initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Ordering Activity to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

PRIORITY LEVEL	RESOLUTION TIME
Priority 1	1 to 2 business days
Priority 2	3 to 6 business days
Priority 3	Licensor's discretion

4. **ORDERING ACTIVITY'S OBLIGATIONS DURING THE LICENSE TERM PERIOD.**

- (a) Ordering Activity shall notify Licensor of any Bugs and errors by sending an email to support@checkmarx.com.
- (b) Ordering Activity shall appoint one support contact designee who will be Licensor's single point of contact for support requests.
- (c) Ordering Activity shall provide Licensor with all reasonably requested reasonable cooperation and assistance as required to provide support in accordance with the response times set out above. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Ordering Activity's failure to provide reasonable support and assistance to Licensor.

- (d) All support services are provided remotely unless otherwise agreed by the parties. If Ordering Activity requires the use of specific remote connectivity software, it is Ordering Activity responsibility to license and operate such software. Remote support shall be provided via WebEx or other mutually agreed means.

PERPETUAL SOFTWARE LICENSE AND TERM SUPPORT AGREEMENT

1.0 DEFINITIONS.

- 1.1** “**Affiliate**” means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party; and “control” means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.
- 1.2** “**Authorized Contractor**” means a contractor who holds a valid Named User License purchased by Ordering Activity for the purpose of providing services to Ordering Activity and its Affiliates.
- 1.3** “**Documentation**” means the user guides, installation instructions, release notes and/or training manuals provided to Ordering Activity by Licensor upon delivery of the Products as updated from time to time by Licensor, but does not include marketing materials or sales correspondence.
- 1.4** “**Effective Date**” is set forth in the applicable purchase order.
- 1.5** “**Fees**” means the fees charged by Licensor to Ordering Activity for the Product License and M.U.S. Fees as set forth in the GSA Schedule Pricelist and the purchase order.
- 1.6** “**License Type**” means the node locked or restricted user licenses set forth in Exhibit A and specified in the purchase order.
- 1.7** “**M.U.S.**” means maintenance, upgrade and support as set forth in Exhibit B.
- 1.8** “**M.U.S. Period**” is set forth in Exhibit A and specified in the purchase order.
- 1.9** “**Normal Business Hours**” means Monday through Friday, 9:00 – 17:00 Ordering Activity local time.
- 1.10** “**Product(s)**” means the object code form of Licensor’s software programs which are set forth in Exhibit A; and all bug fixes, Updates, and Enhancements provided to Ordering Activity during the Term of this Agreement.
- 1.11** “**Territory**” means the territory set forth in Exhibit A.
- 1.12** “**Term**” means the Product license term set forth in Exhibit A.
- 1.13** “**Workaround**” means the term set forth in Exhibit B.

2.0 GRANT OF LICENSE.

- 2.1 Grant.** Subject to the terms and conditions of this Agreement, the underlying GSA Schedule Contract, and the purchase order, Licensor grants to Ordering Activity a perpetual, non-exclusive, non-transferable, non-sublicenseable (except only as provided in Section 2.3) license, within the Territory: (a) to utilize the Products and Documentation for internal use only, subject to the limitations of the License Type; and (b) to make one (1) copy of the Products for archival and backup purpose only, and a reasonable amount of copies of the Documentation required for Ordering Activity’s internal use.
- 2.2 Restrictions.** Ordering Activity may not directly or indirectly, alone or with any third party: (a) work around any technical limitations in the Products or attempt to circumvent any License Type restrictions; (b) reverse engineer, decompile, disassemble or create derivative works of the Products or Documentation; (c) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend the Products or Documentation to any third party; (d) use the Products in any manner that is against the law of any jurisdiction; (e) use the Products for commercial software or commercial audit services, or make the Products available in a service bureau or any similar commercial time-sharing arrangement; (f) use the Products for the benefit of any third party; (g) transfer, assign or permit the sharing of license keys to a third party; (h) process or permit to be processed any code of a third party; or (i) otherwise provide third party access to the Products or Documentation.
- 2.3 Sublicensing; Use by Authorized Contractors.** Ordering Activity shall be permitted to grant sublicenses to Ordering Activity’s Affiliates, by purchasing additional Named User licenses on behalf of its Affiliates, who shall be entitled to use the Product for their own internal use subject to the terms and conditions of this Agreement. Ordering Activity shall also be permitted to grant sublicenses to Authorized Contractors by purchasing additional Named User licenses on behalf of Authorized Contractors who have a need to use the Product to fulfill contractual obligations to

provide services to Ordering Activity or its Affiliates. These Named User licenses may only be used by the Authorized Contractor: (a) for the benefit of Ordering Activity and its Affiliates; and (b) to scan the code of Ordering Activity or its Affiliates. The Authorized Contractor may not use the Product for the contractor's own benefit or for the benefit of any other party. Ordering Activity shall remain responsible at all times for the use of the Product and compliance with all terms and conditions of this Agreement by its Affiliates and Authorized Contractors.

- 2.4 Audit and Enforcement Rights.** Licensor shall be entitled, up to one time per each twelve (12) month period during the Term, commencing on the Effective Date, to request a Product license audit to verify compliance with this Agreement and the number and type of licenses purchased by Ordering Activity. Within thirty (30) days of Licensor's written request, Ordering Activity shall conduct a diligent internal audit and shall provide Licensor with a written license compliance certification signed by a duly authorized officer of Ordering Activity, certifying the use of the Products during the specified audit period.

3.0 SUPPORT.

- 3.1 Description of Support.** Subject to the terms and conditions of this Agreement, the underlying GSA Schedule Contract, and the purchase order, Licensor will provide M.U.S. in accordance with the service level agreement attached hereto as Exhibit B during the M.U.S. Period.

- 3.2 M.U.S. Renewals.** The M.U.S. Period may be renewed at Ordering Activity's option as set forth in this Section. If Ordering Activity's M.U.S. Period should terminate or expire, Ordering Activity may reinstate M.U.S. upon issuance of a purchase order and payment of: (a) the cumulative outstanding M.U.S. Fees that would have been paid had the M.U.S. not lapsed, plus (b) the M.U.S. Fees for the renewal period, according to Licensor's then applicable GSA price list.

- 3.3 Product End of Life Support Policy.** Licensor retains the right to discontinue ("End-of-Life") a Product, upon twelve (12) months prior written notice to Ordering Activity. Following the Product End-of-Life, Product licenses and M.U.S. shall no longer be available for purchase, and Licensor shall have no further obligation to support the Product.

4.0 RESERVED.

5.0 TITLE AND OWNERSHIP; PROPRIETARY NOTICES.

- 5.1 By Licensor.** Licensor retains all right, title and interest in and to the Software and Documentation and all copies, improvements, enhancements, modifications and derivative works of the Software and Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. All express or implied rights to the Products and Documentation not specifically granted herein are expressly reserved to Licensor.

- 5.2 Proprietary Notices.** Ordering Activity may not remove the copyright, trademark and other proprietary notices contained on or in the Products and the Documentation as delivered to Ordering Activity on all copies of such Products and Documentation.

6.0 LIMITED WARRANTY.

- 6.1 Limited Product Warranty.** Licensor warrants to Ordering Activity that: (a) for a period of thirty (30) days after Acceptance by Ordering Activity (the "**Warranty Period**"), the Product, when properly installed and used in accordance with the Documentation, is capable of operating in substantial conformity with the Documentation; and (b) Licensor will, prior to delivery of the Product, perform standard scans to prevent the presence of viruses, bugs, malware or other harmful or malicious code in the Product.

- 6.2 Warranty Limitations.** The limited warranties set forth above in Section 6.1 shall not apply if the Product: (a) is not used in accordance with the Documentation; (b) has been modified without Licensor's express authorization; (c) fails to function due to a malfunction of Ordering Activity's equipment; or (d) fails to function because of third party products (software and/or hardware), incorporated or integrated with, or used in connection with the Products which are not provided or approved by Licensor.

- 6.3 Warranty Claims.** If, during the Warranty Period, Ordering Activity determines that the Products do not comply with the warranties set forth in Section 6.1, Ordering Activity shall provide Licensor with written notice documenting each such non-conformity. Within a reasonable time after receipt of Ordering Activity's notice, Licensor shall, at Licensor's sole discretion and as Ordering Activity's sole and exclusive remedy: (a) deliver to Ordering Activity a Workaround or correction of the non-conformity; (b) offer to Ordering Activity a similar product with substantially the same functionality as the non-conforming Product or (c) immediately terminate this Agreement and refund the prorated amount of license fees paid by Ordering Activity for such Product, depreciated over the remaining duration of the Term on a straightline basis beginning on the Effective Date.

6.4 Disclaimer of Liability. EXCEPT FOR THE LIMITED WARRANTIES PROVIDED IN SECTION 6.1, ALL PRODUCTS AND

DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS. THE LIMITED WARRANTIES SET FORTH IN SECTION 6.1 ARE THE

EXCLUSIVE WARRANTIES OFFERED BY LICENSOR AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE PRODUCTS WILL MEET THE REQUIREMENTS OF ORDERING ACTIVITY, THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED AND/OR ERROR-FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE PRODUCTS WILL RENDER ORDERING ACTIVITY'S CODE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY

EXPOSURES, OR THAT THE PRODUCTS WILL DETECT ALL ERRORS OR VULNERABILITIES IN ORDERING ACTIVITY'S SOURCE CODE. THE REMEDIES SET FORTH IN THIS SECTION 6 ARE THE SOLE AND EXCLUSIVE REMEDIES REGARDING ACTUAL OR ALLEGED BREACH OF WARRANTY OR FAILURE OF THE PRODUCT TO PERFORM.

7.0 RESERVED.

8.0 RESERVED.

9.0

RESERVED.

10.0

RESERVED.

11.0 RESERVED.

12.0 GENERAL PROVISIONS.

12.1 Restricted Parties. Ordering Activity represents and warrants that it is not a "Restricted Party," which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions (a Prohibited Territory") or (b) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Ordering Activity shall not distribute, transfer or permit access to any Vendor Software or Documentation to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Vendor and, as appropriate, any relevant government agency.

12.2 United States Government Rights in Commercial Off-the Shelf Software. The Software and Documentation constitute "commercial computer software," and "commercial computer software documentation" and "technical data" as defined in FAR Section 12.212.

Consistent with the applicable provisions of the applicable federal acquisition regulations, including but not limited to 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Software and Documentation are being licensed to U.S. Government end users only as commercial items and pursuant solely to the terms and conditions herein.

Section - EXHIBIT A GENERAL DEFINITIONS & PRODUCTS

Ordering Activity Data:

"**Effective Date**" shall mean the date set forth in the applicable purchase order

"**Term**" shall mean:

Product License Term: Perpetual
M.U.S. Period: ; i.e. 12, 24, 36 months

"**Ordering Activity Contact**" shall mean the individual designated to receive notices under this agreement.

"**Territory**" shall mean the physical territory where the License is granted

Products:

Product [complete: products]	License Type
CxSuite Application Server/CxEngine	Node-locked
CxScanner	Named User License

SPECIAL TERMS:**Notes:**

- (1) Definition of License Types:

"Node-locked" means a license is tied to a specific system/machine so that the Product may only be used on that system/machine.

"Named User License" means a license is tied to a specific named user so that the Product may only be used by that individual named user.

EXHIBIT B**Section - SUPPORT****1. DEFINITIONS.**

"Bug" means an error condition that causes the Product to fail to operate substantially in compliance with the Documentation.

"Enhancement" means a new version of a Product which Licensor makes generally available to its Ordering Activities who are eligible to receive Support, which may improve the functionality of, or add minor functional capabilities to, the Products.

"Resolution" means the time elapsed until a Workaround or permanent solution to the Bug has been provided in accordance with Exhibit B according to the severity classification.

"Updates" means a set of procedures or new program code that Licensor implements to fix Bugs, and which may include modifications to improve performance or revisions to versions or releases of a Product which may improve its functionality, or additions or corrections to Documentation.

"Workaround" means a temporary error correction or change in operating procedure allowing Ordering Activity to continue to use the Products.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement above.

2. SUPPORT.

During the Term of the Agreement:

- 2.1. Licensor will provide technical support and assistance with respect to the Products, including (i) clarification of functions and features; (ii) clarification of Documentation; and (iii) technical support and assistance in the operation of the Products. Licensor shall provide this general support only for the latest version of the Product and the one previous version. Licensor shall provide support during Normal Business Hours via telephone, and email to Ordering Activity's Support Contact Designee.
- 2.2. Bug fixes will generally be accomplished through the periodic release of Updates and Enhancements. Ordering Activity acknowledges that some Bug fixes will require Ordering Activity to update the Product to the then-current version, and Licensor shall not be required to provide Bug fixes, Enhancements or Updates for any Product version other than the then-current version.
- 2.3. Errors in the Documentation will be corrected by Licensor in its discretion. Licensor shall not be responsible for providing support for matters not directly involving problems with the Products, such as Ordering Activity operations problems, database problems, and interfaces to other systems, third party products (software and/or hardware) etc.
- 2.4. Licensor shall not be responsible to provide support for problems resulting from unauthorized modifications of the Product; Product misuse; use of the Product in a manner other than described in the Documentation; or negligence on the part of the Ordering Activity or a third party outside of Licensor's control.
3. **RESPONSE AND RESOLUTION SCHEDULE.**

Ordering Activity will initially classify each error in the Product or related Documentation based on the following schedule, and thereafter report such error or Bug to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Ordering Activity; however the final classification of the priority level will be determined by Licensor.

PRIORITY LEVEL:	CRITERIA
Priority 1	<u>Fatal</u> : Bug preventing all use of the Product.
Priority 2	<u>Severe Impact</u> : Bug disabling major functions from being performed. This condition exists when the Product is partially inoperative, but is still usable by Ordering Activity and the impact is one of inconvenience.
Priority 3	<u>Minimal Impact</u> : Includes all other Bugs. This condition generally exists when the Product is usable and the problems consist of inconveniences or minor failures involving individual components of the system.

Upon receipt of Ordering Activity's service call initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Ordering Activity to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

PRIORITY LEVEL	RESOLUTION TIME
Priority 1	1 to 2 business days
Priority 2	3 to 6 business days

Priority 3

Licensor's discretion

4. **ORDERING ACTIVITY'S OBLIGATIONS DURING THE LICENSE TERM PERIOD.**

- (a) Ordering Activity shall appoint one Support Contact Designee.
- (b) Ordering Activity shall properly maintain the Products at the then-current version and release level as provided herein.
- (c) Subject to Ordering Activity's security requirements, Ordering Activity shall provide Licensor with reasonable access to Ordering Activity's system facilities including, but not limited to, a secure connection to Ordering Activity's principal server, which has been determined by the Parties to be required in order that timely support may be provided pursuant to this Agreement.
- (d) Ordering Activity shall provide remedial corrective action, if necessary, with the assistance of Licensor personnel.
- (e) Ordering Activity shall notify Licensor of any Bugs in accordance with Licensor's then-current problem reporting procedures.
- (f) If Ordering Activity has purchased a node-locked Product license, Ordering Activity may transfer the license to a reasonable number of machines, in Licensor's discretion, by: (a) sending written notification of such transfer to Licensor, signed by an authorized officer of Ordering Activity; and (b) promptly deleting the previously installed version upon transfer of the Product to the new machine.
- (g) All support services are provided remotely unless otherwise agreed by the parties. Ordering Activity will use commercially reasonable efforts to provide Licensor with remote diagnostic capabilities by using standard remote software packages. It is Ordering Activity responsibility to license and operate any such remote diagnostic software.

CirrusWorks, Inc.
510 N Washington Street
Suite 300
Falls Church, VA 22046

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

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. IT IS VERY IMPORTANT THAT YOU CHECK THAT YOU ARE PURCHASING CIRRUSWORKS SOFTWARE AND EQUIPMENT FROM AN APPROVED SOURCE AND THAT YOU, OR THE ENTITY YOU REPRESENT (COLLECTIVELY, THE "CUSTOMER") HAVE BEEN REGISTERED AS THE END USER FOR THE PURPOSES OF THIS CIRRUSWORKS END USER LICENSE AGREEMENT. IF YOU ARE NOT REGISTERED AS THE END USER YOU HAVE NO LICENSE TO USE THE SOFTWARE AND THE LIMITED WARRANTY IN THIS END USER LICENSE AGREEMENT DOES NOT APPLY. ASSUMING YOU HAVE PURCHASED FROM AN APPROVED SOURCE INSTALLING OR USING CIRRUSWORKS SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

CIRRUSWORKS, INC. LICENSING THE SOFTWARE ("CIRRUSWORKS") IS WILLING TO LICENSE THIS SOFTWARE TO YOU ONLY UPON THE CONDITION THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND 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. 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. BY INSTALLING OR USING THE SOFTWARE, YOU ARE REPRESENTING THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND BINDING YOURSELF TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CIRRUSWORKS IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT INSTALL OR USE THE SOFTWARE. FOR THE PURPOSES OF THIS END USER LICENSE AGREEMENT, AN "APPROVED SOURCE" MEANS (A) CIRRUSWORKS; OR (B) A DISTRIBUTOR OR SYSTEMS INTEGRATOR AUTHORIZED BY CIRRUSWORKS TO DISTRIBUTE / SELL CIRRUSWORKS EQUIPMENT, SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS; OR (C) A RESELLER AUTHORIZED BY ANY SUCH DISTRIBUTOR OR SYSTEMS INTEGRATOR IN ACCORDANCE WITH THE TERMS OF THE DISTRIBUTOR'S AGREEMENT WITH CIRRUSWORKS TO DISTRIBUTE / SELL THE CIRRUSWORKS EQUIPMENT, SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS.

THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S USE OF THE SOFTWARE (DEFINED BELOW), EXCEPT TO THE EXTENT: (A) THERE IS A SEPARATE SIGNED CONTRACT BETWEEN CUSTOMER AND CIRRUSWORKS GOVERNING CUSTOMER'S USE OF THE SOFTWARE. FOR PURPOSES OF THE AGREEMENT, "SOFTWARE" SHALL MEAN COMPUTER PROGRAMS, INCLUDING FIRMWARE AND COMPUTER PROGRAMS EMBEDDED IN CIRRUSWORKS EQUIPMENT, AS PROVIDED TO CUSTOMER BY AN APPROVED SOURCE, AND ANY UPGRADES, UPDATES, BUG FIXES OR MODIFIED VERSIONS THERETO (COLLECTIVELY, "UPGRADES"), ANY OF THE SAME WHICH HAS BEEN RELICENSED UNDER THE CIRRUSWORKS SOFTWARE TRANSFER AND RE-LICENSING POLICY (AS MAY BE AMENDED BY CIRRUSWORKS FROM TIME TO TIME) OR BACKUP COPIES OF ANY OF THE FOREGOING.

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shall only use the Software in connection with the use of CirrusWorks equipment purchased by the Customer from an Approved Source and 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 CirrusWorks relicensing/transfer policy then in force), or use the Software on CirrusWorks equipment not purchased by the Customer from an Approved Source or on secondhand CirrusWorks 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 or except to the extent that CirrusWorks 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 CirrusWorks; 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 CirrusWorks. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, CirrusWorks shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of CirrusWorks' 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 CirrusWorks makes such information available.

Software, Upgrades and Additional Copies. 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 TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CIRRUSWORKS' EQUIPMENT SUPPLIED BY AN APPROVED SOURCE 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.

Proprietary Notices. Customer 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 the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of CirrusWorks.

Term and Termination. The Agreement and the license granted herein shall remain effective until terminated. Customer may terminate the Agreement and the license at any time by destroying all copies of Software and any

Documentation. Customer's rights under the Agreement will terminate immediately without notice from CirrusWorks if Customer fails to comply with any provision of the Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer, all restrictions and limitations imposed on the Customer under the section titled "General Limitations" and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.

Customer Records. Customer grants to CirrusWorks 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. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to CirrusWorks the appropriate license fees, plus the reasonable cost of conducting the audit.

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 CirrusWorks under the 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, import, transfer and use of CirrusWorks Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. CirrusWorks 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.

Third Party Code. Certain portions of the Software may include software code which is subject to "open source" or "free software" licenses ("Third Party Code"). The Third Party Code is not subject to the terms and conditions of this Agreement, except for Sections regarding Disclaimers, Limitation of Liability. Instead, each item of Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for the Third Party Code, including any rights to copy, modify, or distribute Third Party Code under the applicable license. If CirrusWorks makes modifications to such Third Party Code and if the applicable license requires that such modifications be made available and CirrusWorks does not already publish such modifications via the applicable Third Party Code community, then CirrusWorks will make its modifications available.

Limited Warranty

Subject to the limitations and conditions set forth herein, CirrusWorks warrants that commencing from the date of shipment to Customer (but in case of resale by an Approved Source other than CirrusWorks, commencing not more than ninety (90) days after original shipment by CirrusWorks), and continuing for a period of the longer of (a) one year 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 CirrusWorks 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 an Approved Source by a Customer who is the first registered end user. Customer's sole and exclusive remedy and the entire liability of CirrusWorks and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at CirrusWorks' 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 the Approved Source supplying the Software to Customer, within the warranty period. CirrusWorks or the Approved Source 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 CirrusWorks 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, CirrusWorks 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.

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DISCLAIMER OF WARRANTY

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Customer acknowledges and agrees that CirrusWorks has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

Controlling Law, Jurisdiction. The Agreement and warranties ("Warranties") are controlled by and construed under the laws of the State of Virginia, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of Virginia shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties.

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ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

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- (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

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- restriction or except to the extent that CirrusWorks 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 CirrusWorks; 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 CirrusWorks. Ordering Activity shall implement reasonable security measures to protect such trade secrets.

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Limited Warranty

Subject to the limitations and conditions set forth herein, CirrusWorks warrants that commencing from the date of shipment to Ordering Activity (but in case of resale by an Approved Source other than CirrusWorks, commencing not more than ninety (90) days after original shipment by CirrusWorks), and continuing for a period of the longer of (a) one year 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. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from an Approved Source by a Ordering Activity who is the first registered end user. Ordering Activity's remedy and the liability of CirrusWorks and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at CirrusWorks' 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 the Approved Source supplying the Software to Ordering Activity, within the warranty period. CirrusWorks or the Approved Source 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 CirrusWorks 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, CirrusWorks 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.

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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 CIRRUSWORKS, 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. 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.

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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.

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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.
 - 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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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 DOC-13883	Cisco Configuration Engine 3.0 Media and Developer Kit	
Management System	13 Cloud and Systems Management DOC-68737	Cisco Connected Grid Network
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 DOC-68556	Cisco Intelligent Automation for SAP	
	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 DOC-68556	Cisco Process Orchestrator	
	14 Cloud and Systems Management	Cisco Server Provisioner
	DOC-68556	
14 Cloud and Systems Management	Cisco Tidal Enterprise Scheduler	DOC-68556

20 Cloud and Systems Management	Cisco Tidal Enterprise Scheduler (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
47 Security	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility & Control	DOC-2
49 Security	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Web Security Essentials	DOC-3
50 Security	Cisco ISE Wireless	DOC-4
51 Security	Cisco ISE Wireless Upgrade	DOC-5
52 Security	Cisco ISE Advance	DOC-6
53 Security	Cisco ISE Migration	DOC-7
54 Security	Cisco ISE All-in-One	DOC-8
56 Security	Cisco Content Security Software (formerly Cisco IronPort Email and Web Security Appliances and Security Management Application)	DOC
59 Security	Cisco ASA 1000V Cloud Firewall	DOC-11
61 Security	Cisco Integrated Security Appliance (ISA)	DOC-12
63 Security	Cisco ACS (all-in-one version)	DOC-14
35 TelePresence	Cisco TelePresence Commercial Express	DOC-29311
65 TelePresence	Cisco TelePresence Multipoint Switch 1.5	DOC-14958
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35,65 TelePresence	Cisco TelePresence Manager	DOC-29311
65 TelePresence	Cisco TelePresence Primary Codec	DOC-14958
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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	DOC-31551

Videoscape Media Suite Software

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](#)

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Last Updated May 30, 2013

48 SUPPLEMENTAL END USER LICENSE AGREEMENT

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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 FAR42.1204. 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.

Cloud and Systems Management

[Cisco Active Network Abstraction](#)

[DOC-19972](#)

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](#)

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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.

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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.

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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.

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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 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.

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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 ACCORDING TO THE TERMS SET FORTH IN THE UNDERLYING GSA SCHEDULE CONTRACT.

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

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, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. .

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.

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.

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. ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

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](#)

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, 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 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, 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 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.

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. 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.

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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.

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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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

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(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.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE PRODUCT TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE PRODUCT, AND (B) YOU MAY RETURN THE SOFTWARE PRODUCT (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE PRODUCT 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:

"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.

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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 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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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.

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.

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](#)

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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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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.

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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.

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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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.

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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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Dear Customer,

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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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Cisco ASA Next Generation Firewall Services

Security

(formerly ASA CX Context-Aware Security) Application

[DOC-2](#)

Visibility & Control

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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

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Cisco ASA Next Generation Firewall Services

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 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.

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

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 (the 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.

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.

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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

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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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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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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 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

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

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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.

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.

"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:
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,
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

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

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.

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
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TelePresence	Cisco TelePresence Express Multipoint Switch	DOC-14958
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[DOC-29311](#)

Please see the SEULAs starting above for (DOC-29311) and for (DOC-14958) for the SEULAs applicable to these offerings.

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 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:

"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.

IMPORTANT: READ CAREFULLY**Dear Customer,****Supplemental End User License Agreement**

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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 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.

“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.

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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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**

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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/upgrade). 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/upgrade). 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.

Sharing Your Personal Information

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:

- Within Cisco or with any of our worldwide subsidiaries for purposes of data processing or storage.
- 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

pages you view and the links you click). These tools help make your visit to our website easier, more efficient and more valuable by providing you with a customized experience and recognizing you when you return. To learn more, read Cisco's Use of [Automatic Data Collection Tools](#). Our website includes widgets, which are interactive mini-programs that run on our site to provide specific services from another company (e.g. displaying the news, opinions, music, etc). Personal information, such as your email address, may be collected through the widget. Cookies may also be set by the widget to enable it to function properly. Information collected by this widget is governed by the privacy policy of the company that created it. Our widget may have an import contacts feature to help you email your contacts. At your request, we will search your email address book to help you import your contacts to our website.

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Linked Websites

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.

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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

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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 that 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.

"Oracle" As a Trade Name

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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Customer acknowledges and agrees that Cisco has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

Controlling Law, Jurisdiction. The Agreement and warranties ("Warranties") are controlled by and construed under the federal laws of the United States of America, notwithstanding any conflicts of law provisions.

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.

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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.**

IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA"). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided "AS-IS" without indemnification, support or warranty of any kind, expressed or implied.

1. DEFINITIONS.

- 1.1 "Affiliate"** means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.
- 1.2 "Documentation"** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 1.3 "Guest Operating Systems"** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.
- 1.4 "Intellectual Property Rights"** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.5 "License"** means a license granted under Section 2.1 (General License Grant).
- 1.6 "License Key"** means a serial number that enables You to activate and use the Software.
- 1.7 "License Term"** means the duration of a License as specified in the Order.
- 1.8 "License Type"** means the type of License applicable to the Software, as more fully described in the Order.
- 1.9 "Open Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at www.vmware.com/download/open_source.html.
- 1.10 "Order"** means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).
- 1.11 "Product Guide"** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.
- 1.12 "Support Services Terms"** means VMware's then-current support policies, copies of which are posted at www.vmware.com/support/policies.
- 1.13 "Software"** means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 1.14 "Territory"** means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

- 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.
- 1.17 “VMware”** means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.
- 1.18 “VMware Tools”** means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

- 2.1 General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.
- 2.2 Third Party Agents.** Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.
- 2.3 Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.
- 2.4 Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.
- 2.5 VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.
- 2.6 Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the open_source_licenses.txt file, the Documentation or as applicable, the corresponding source files for the Software available at www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the "Source Files"), You may obtain a copy of the applicable Source Files from VMware's website at www.vmware.com/download/open_source.html or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

3. RESTRICTIONS; OWNERSHIP.

- 3.1 License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

- 3.2 Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware, provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.
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- 3.4 Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.
- 4. ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.
- 5. RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.
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- 8.1 Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

8.2 Remedies. If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section

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9.1 Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND IT'S LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.2 Further Limitations. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

10. TERMINATION.

10.1 EULA Term. The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

10.2 Termination for Breach. VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

10.3 Termination for Insolvency. VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4 Effect of Termination. Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

11. CONFIDENTIAL INFORMATION.

11.1 Definition. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or

identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

- 11.2 Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.
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- 11.4 Data Privacy.** You agree that VMware may process technical and related information about Your use of the Software which may include 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 and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.
- 12. GENERAL.**
- 12.1 Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html, You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to you, provided that VMware remains responsible to You for the performance of the services.
- 12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.
- 12.3 Waiver.** Failure to enforce a provision of this EULA will not constitute a waiver.
- 12.4 Severability.** If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.
- 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.
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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 D 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.

Ordering Activity may: (i) use the Software, with the same or lower version number identified herein, in numbers equal to the number of licenses purchased for all items, or in the event Ordering Activity is licensing the Software on a capacity basis, up to the maximum capacity purchased; (ii) make copies of the Software, documentation or other user information accompanying the Software solely for back-up purposes, provided such back-up copies are only utilized as a replacement for the original copy on the same computer that the Software was previously installed; and, (iii) make a copy of or print documentation provided in electronic form for Ordering Activity's internal use only, and Ordering Activity may use CommVault trademarks solely for these purposes, but Ordering Activity must incorporate all patent, copyright, trademark and other notices included on the materials on any copies or partial copies that Ordering Activity makes.

Ordering Activity may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of CommVault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign Ordering Activity's rights to use the Software; (v) use the Software in violation of applicable local, federal or other laws or regulations; (vi) use the Software for any purpose other than as permitted in this EULA; or, (vii) remove, destroy, erase, alter or otherwise modify CommVault's trademarks. Unless this software is provided to Ordering Activity for beta, demonstration, test, or evaluation purposes or is labeled "Not for Resale" as further described herein, Ordering Activity agrees to use the Software solely for Ordering Activity's internal data center operations and to restrict any access to the Software, documentation, or other user information accompanying the Software only to those of your employees having a demonstrable need to have such access for your internal data processing operations. Ordering Activity agrees that it shall not permit any access to the Software, documentation, or other user information accompanying the Software to any person engaged in product research, development, support, sales, marketing, or other functions not directly related to Ordering Activity's internal data processing operations. Ordering Activity also agree not to use the Software, documentation, or user information accompanying the Software to assist, directly or indirectly, in the development or design of any computer hardware or software program including, but not limited to, a program that provides or is intended to provide or include a similar feature or functionality as the Software, or any conversion utility or aid relating to the Software intended to enable or facilitate a user's conversion from the use of the Software to an alternative program. Any software CommVault and/or its licensors may provide Ordering Activity as part of maintenance and support services are governed by the Schedule Contract and this EULA. This EULA does not obligate CommVault and/or its licensors to provide any maintenance and support services or to support any Software provided as part of those services. If support services are provided, they shall be provided subject to the terms of the Schedule Contract and this EULA and in accordance with CommVault's policies. In the event Ordering Activity elects to purchase maintenance and support services, Ordering Activity must purchase such maintenance and support services for all of the licensed Software in Ordering Activity's entire environment. Such maintenance and support services shall begin on the date Software is shipped to Ordering Activity. Personal health information, personal financial information, or any other personally identifiable information is not necessary for CommVault's provision of services. Ordering Activity agrees that Ordering Activity will not provide any such information to CommVault.

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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
 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 +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 Severity1-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:

Product License Agreement 01 18

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

Product License Agreement 01 18

-
- 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.

- 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

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 Activities 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 Activitys, 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 under 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. IN SO FAR 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. 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.**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
 - 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> 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.

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	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 technical 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 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 Licensors 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> 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.

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	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
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	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)
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	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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> 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
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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
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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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)
V5000	Standard 3-Year, Next Business Day Onsite Parts Replacement ^{2 3} <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ^{2 3} (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, Next Business Day Onsite Parts Replacement ² <hr/> 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 <hr/> Optional 5-Year, 4-Hour Onsite Parts Replacement ² (additional purchase required)	Standard 3-Year, 4-Hour Onsite Parts Replacement ² <hr/> 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.

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2. On-Site Support Not Included. Support Services are strictly limited to telephone and electronic support.

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

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").
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 - 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 Acknowledge-ment 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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

**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 SUBJECT 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
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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:
 - 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
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
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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
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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) 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, fiber 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

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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
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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.

Exhibit C 14. 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.

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Intercede Group
Lutterworth Hall, St. Mary's Road
Lutterworth, Leicestershire, United Kingdom LE17 4PS

**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.

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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**

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.

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(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 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.

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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.

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3 Problem Management

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 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.

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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 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

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

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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.

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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.
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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 Contracot 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 Contractors 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, infringes 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.

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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 **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.

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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 **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-sight 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.

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Attachment A - LUMETA Software

1. Grant of Software License

Subject to the terms and conditions, the underlying GSA Schedule Contract, Schedule Price List, applicable ordering document, and Your acceptance, of this License Agreement ("Agreement"), Lumeta Corporation ("Lumeta") grants to You a limited, non-exclusive, non-transferable and non-assignable license to Lumeta software, modules, feature(s), patches, updates, improvements and documentation (the "Software") for Your internal business purposes up to the number of unique IP addresses and for the term (the "Term") specified in the ordering document as applicable.

As used herein, "Software" excludes any software that is subject to licenses which are approved by the Open Source Initiative at www.opensource.org and other licenses with terms and conditions that are similar ("Open Source Software"). Any Open Source Software provided by Lumeta to You may be subject to the applicable open source license terms. As between the parties, Lumeta is solely responsible for reviewing, understanding and complying with such open source license terms. Other than the Open Source Software provided by Lumeta to You, You shall not use any Open Source Software in conjunction with the Software that would subject the Software to open source license terms.

The Software is licensed, not sold, by Lumeta to You, and nothing herein will be interpreted or construed as a sale or purchase of the Software. You do not have any rights in or to the Software except as expressly granted in this Agreement. Lumeta and/or its suppliers reserve to itself all rights to the Software not expressly granted to You under this Agreement. Lumeta and/or its suppliers retain all copyright, trademark, patent, and other intellectual property rights in and to the Software. As between the parties, You acknowledge that the Software, all copies of the Software, any derivative works, compilations, and collective works of the Software, and any know-how and trade secrets related to the Software are the sole and exclusive property of Lumeta and contain Lumeta's and/or its suppliers' confidential and proprietary materials.

You grant to Lumeta and/or its suppliers a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Software any suggestion, enhancement request, recommendation, correction or other feedback provided by you relating to the Software.

2. General Limitations

Except as otherwise expressly provided under this Agreement and the applicable ordering document, You shall have no right, and You specifically agree not to:

- (i) exceed the number of unique IP addresses licensed;
- (ii) utilize the Software beyond the applicable Term;
- (iii) transfer, assign or sublicense Your license rights to any other person, and any such attempted transfer, assignment or sublicense shall be void;
- (iv) provide, divulge, disclose, or make available to, or permit the use of the Software by any third party;
- (v) sell, resell, license, sublicense, distribute, rent or lease the Software or include the Software in a service bureau or outsourcing offering;
- (vi) 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;
- (vii) decompile, decrypt, reverse engineer, disassemble or otherwise reduce the Software to human-readable form, or permit third parties to do the same;
- (viii) except for backup purposes, make any copies or duplicates of any Software without the prior written permission of Lumeta; (ix) circumvent or disable any features or technological protection measures in the Software.

3. Protection of Information

You acknowledge and agree that the Software and its associated documentation, including the specific design and structure of individual programs and know-how, constitute trade secrets and/or copyrighted material of Lumeta and shall be held in the strictest confidence by You. Your rights with respect to the Software are limited to the right to use the Software pursuant to the terms and conditions in this Agreement and the applicable ordering document. You may not remove any proprietary notice of Lumeta or any of its licensors from any copy of the Software or documentation.

4. Reserved.

5. Warranties and Disclaimer

- (a) Software. Lumeta warrants that commencing from the date of shipment from Lumeta, and continuing for a period of ninety (90) days, or for the duration of the Term, whichever is shorter: (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 its published specifications. This limited warranty extends only to the You who is the original licensee. Your remedy and the entire liability of Lumeta and its' suppliers under this limited warranty will be, at Lumeta's option, either to (i) make reasonable efforts to repair or (ii) replace non-conforming media or Software. In no event does Lumeta warrant that the Software is error free or that You 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, Lumeta does not warrant that the Software or any system or network on which the Software is used will be free of vulnerability to intrusion or attack. Any request for the above remedies must be made within the warranty period.

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(b) Disclaimer. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. 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, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.** In addition, Lumeta does not provide any warranties regarding (i) the accuracy of the results obtained through use of the Software, (ii) that the Software will operate error free, or in an uninterrupted fashion (iii) security of the Software from intrusion or attack, or (ix) Your network, communications links or infrastructure.

6. Reserved.

7. Reserved.

8. Reserved.

9. Export Restrictions

You agree to comply strictly with all applicable law, including, but not limited to, U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. You will not export, re-export, or import the Software.

10. Reserved.

11. Reserved.

12. Reserved.

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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 **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:
 - 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**

MCAFFEE PUBLIC SECTOR, LLC.

MCAFFEE PUBLIC SECTOR, LLC. LICENSE, WARRANTY AND SUPPORT TERMS

BY EXECUTING THIS AGREEMENT IN WRITING, THE ORDERING ACTIVITY AGREES TO THE TERMS OF THIS END USER LICENSE AGREEMENT. IF ORDERING ACTIVITY IS ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, ORDERING ACTIVITY REPRESENTS AND WARRANTS THAT ORDERING ACTIVITY HAS FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

- 1) IF THE ORDERING ACTIVITY DOES NOT AGREE TO THESE TERMS, THEN DO NOT EXECUTE THIS AGREEMENT. Definitions.**
- a) "Authorized Partner" means any of McAfee's distributors, resellers or other business partners that are authorized by McAfee in writing to sell Support or the Software license rights granted under this Agreement.
 - b) "Cloud Services" means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
 - c) "Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
 - d) "DATs" means detection definition files, also referred to as signature files, that contain the code(s) antimalware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
 - e) "Grant Letter" means a confirmation notice letter issued by McAfee to Ordering Activity, confirming the Software and Support purchased by Ordering Activity, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below).
 - f) "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.
 - g) "McAfee" means (i) McAfee, LLC, with offices located at 2821 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) McAfee Ireland Limited, with its registered offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Software is purchased in Europe, the Middle East, or Africa, (iii) McAfee (Singapore) Pte Ltd., with a trading address located 101 Thomson Road 29-02/05 United Square, Singapore, 307591, Singapore, 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) McAfee Co. Ltd., with offices located at Shibuya Mark City West, 12-1, Dogenzaka 1-chome, Shibuya-ku, Tokyo, 150-0043, Japan, if the Software is purchased in Japan, (v) McAfee (Beijing) Security Software Co. Ltd., with a trading address located at Room 616, No. 6 North Workers' Stadium Road, Chaoyang District, Beijing, China, if the Software is purchased in China (in RMB), or (vi) McAfee 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) "Software" means the McAfee software program in object code format (i) licensed from McAfee and purchased from McAfee or its Authorized Partners, or (ii) embedded in or pre-loaded on McAfee-branded hardware equipment purchased from McAfee or its Authorized Partners, in each case including Upgrades and Updates that Ordering Activity install during the applicable Support period. Software may also include additional features or functionality that can be accessed with either a current subscription or active support contract to certain Cloud Services as required by the specific offering and subject to the Cloud Terms of Service.
 - i) "Standard" means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP, and ETSI.
 - j) "Subsidiary" means any entity controlled by Ordering Activity through greater than fifty per cent (50%) ownership of the voting securities.
 - k) "Support" or "Technical Support" means the support services offered by McAfee for the support and maintenance of the Software and the McAfee-branded hardware equipment as further specified in the McAfee Technical Support and Maintenance Terms.
 - l) "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 McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
 - m) "Upgrade" means any and all improvements in the Software that are made generally available to McAfee's customer base as part of purchased Support and which are not separately priced or marketed by McAfee.
- 2) License Grant; Proprietary Rights.**
- a) Subject to the terms and conditions of this Agreement, McAfee hereby grants to the Ordering Activity a nonexclusive, 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 the Ordering Activity's own internal business operations. The Ordering Activity is not granted rights

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to Updates and Upgrades unless the Ordering Activity has 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 the Ordering Activity, is strictly confidential to McAfee. McAfee (or its licensors) owns exclusively and reserves all – and the Ordering Activity 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 the Ordering Activity 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 the Ordering Activity 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, and all copies of the foregoing are trade secrets and proprietary property of McAfee, having great commercial value to McAfee. 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 (as applicable), but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. Such rights shall not be construed as granting Ordering Activity any Software or Support (including Updates and Upgrades) at no charge.
- c) All Cloud Services, and any Software that includes Cloud Services, are subject to the McAfee Cloud Terms of Service Agreement as an attached document to the GSA Schedule 70 contract.

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 as an attached document to the GSA Schedule 70 contract on the applicable date of Ordering Activity's Grant Letter.
- b) Multiple Platforms/Bundles: If the Software supports multiple platforms or if the Ordering Activity receives the Software bundled with other software, the total number of devices on which all versions of the Software is installed may not exceed the Ordering Activity's product entitlement. Certain Software licensed as part of a suite-based McAfee product may also require the purchase of a separate McAfee 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: The Ordering Activity may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
- e) Subsidiaries; Managing Parties: The Ordering Activity may permit a third party with which Ordering Activity enters into a contract to manage Ordering Activity's information technology resources ("Managing Party"), provided that (i) the Managing Party only uses the Software for Ordering Activity's 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) Ordering Activity provides McAfee with written notice that a Managing Party will be using the Software on Ordering Activity's behalf. The Ordering Activity shall be responsible and fully liable for the Managing Party's compliance with or breach of the terms of this Agreement.
- f) General Restrictions: The Ordering Activity 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 Ordering Activity; (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 McAfee; (v) except with McAfee'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. The Ordering Activity may not run or operate the Software in a cloud, Internet-based computing, or similar on-demand computing environment unless the Ordering Activity's Grant Letter specifically provides such.

4) Technical Support and Maintenance.

The McAfee Technical Support and Maintenance Terms and Conditions apply if the Ordering Activity has purchased Support. The McAfee Technical Support and Maintenance Terms and Conditions are incorporated by reference and can be found as an attached document to the GSA Schedule 70 contract. After the support or service subscription period specified in a Grant Letter has expired, the Ordering Activity has no further rights to receive any Support including Upgrades, Updates and telephone support. The Ordering Activity will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or Ordering Activity's internal policies or guidelines in order to disclose to McAfee, in connection with McAfee's performance of Support or otherwise under this Agreement, applicable personally identifiable information, data, and material.

5) Limited Warranty and Disclaimer.

- a) Limited Warranty: McAfee 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 Ordering Activity's exclusive remedy and McAfee's entire obligation and liability McAfee will (i) repair or replace the Software or (ii) if such repair or replacement would in McAfee's opinion be

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commercially unreasonable, upon McAfee's receipt of Ordering Activity's written representation and promise that Ordering Activity has removed all instances of the Software and will not use the Software, refund the price paid by Ordering Activity 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 MCAFEE OR (iii) A MALFUNCTION IN THE SOFTWARE HAS BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY MCAFEE.
- d) **Disclaimer:** EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND MCAFEE MAKES NO REPRESENTATIONS OR WARRANTIES, AND MCAFEE 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, MCAFEE 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, MCAFEE HAS NO RESPONSIBILITY FOR ALL 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 ORDERING ACTIVITY'S 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 THE ORDERING ACTIVITY FOR THE SOFTWARE 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) Ordering Activity's liability for excess usage of and/or any breach of McAfee's intellectual property rights in the Software.
- d) THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY THE ORDERING ACTIVITY CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THE ORDERING ACTIVITY'S NEEDS IN THE EVENT THAT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS, THE ORDERING ACTIVITY AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT THE ORDERING ACTIVITY'S AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THE SOFTWARE WOULD BE HIGHER.
- e) 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.

7) Intellectual Property Indemnity.

- a) **Indemnity:** McAfee will indemnify, and, at its election, defend, the Ordering Activity against claims asserted against the Ordering Activity in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for McAfee's trade secret misappropriation and (ii) the claim is (A) asserted against the Software, alone and not in combination with anything or (B) a combination of the Software.
- b) **Exclusions:** Notwithstanding anything else in this Agreement, McAfee has no obligation to indemnify or defend the Ordering Activity for claims asserted, in whole or in part, against:
 - (i) technology or designs that Ordering Activity gave to McAfee;
 - (ii) modifications or programming to Software that were made by anyone other than McAfee; or
 - (iii) the Software's alleged implementation of some or all of a Standard.

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- c) Conditions: As a condition of McAfee's obligations under this Section 7, the Ordering Activity must provide to McAfee: (i) prompt written notice of the claim and Ordering Activity's agreement to give McAfee control over the defense and settlement of the claim; and (ii) the Ordering Activity's full and timely good faith cooperation during the course of settlement negotiations and prosecution of the claim, and shall afford McAfee access to all nonprivileged communications and documentation with all parties, witnesses and judicial or administrative bodies associated with such claim upon McAfee's request. 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.
- d) McAfee's Consent: McAfee will not be responsible for any cost, expense, or compromise that the Ordering Activity makes or incurs without McAfee's prior written consent.
- e) Remedies: McAfee may, at its sole discretion and at its expense: (i) procure for the Ordering Activity 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 the Ordering Activity's return of the Software to McAfee, and/or removal of the Software from Ordering Activity's systems, refund the residual value of the purchase price paid by the Ordering Activity 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 the Ordering Activity.
- f) Personal Indemnity: The foregoing indemnity is personal to the Ordering Activity. The Ordering Activity may not transfer or to anyone, including Ordering Activity's customers.
- g) Exclusive Remedy: The indemnity section states McAfee's entire obligation and the Ordering Activity's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, made in whole or part against the Software.

8) Termination.

Without prejudice to the Ordering Activity's payment obligations, the Ordering Activity may terminate the Ordering Activity's license at any time by uninstalling the Software. Upon such termination, the Ordering Activity 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 McAfee as "Evaluation" Software, then the provisions of this section apply and shall supersede any other conflicting term of this Agreement. The Ordering Activity's 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 McAfee. 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 the Ordering Activity "AS IS" and McAfee disclaims any warranty or liability obligations to the Ordering Activity 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 Ordering Activity fails to destroy the Evaluation Software after the evaluation period has expired, McAfee may address this in accordance with Section 14, Governing Law, of this agreement. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE'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 the Ordering Activity has received has been identified by McAfee as "Beta" Software, then the provisions of Section 9(a) above shall apply accordingly. McAfee has no obligation to the Ordering Activity to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by McAfee, Ordering Activity will provide feedback to McAfee regarding testing and use of the Beta Software, including error or bug reports. Ordering Activity agrees to grant McAfee a perpetual, nonexclusive, royalty-free, worldwide license to use, copy, distribute and make derivative works, and incorporate the feedback into any McAfee product at McAfee's sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by McAfee of a publicly released commercial version of the Beta Software, the Ordering Activity agrees to return or destroy all earlier Beta Software received from McAfee.
- 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 McAfee under the terms of the applicable FOSS Code license for such component; the Ordering Activity receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails the Ordering Activity's 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. The Ordering Activity acknowledges, but does not agree to be bound, by such terms until they have been reviewed and agreed to in writing.

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 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 Ordering Activity and users (e.g., including, without limitation, Ordering Activity's and users' name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers

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(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, McAfee products installed, McAfee components, processes and services information, frequency and details of update of McAfee components, information about third party products installed, extracts of logs created by McAfee, usage patterns of McAfee products and specific features, etc.) (collectively, "Data").

- b) The collection of this Data may be necessary to provide the Ordering Activity 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 Ordering Activity's and users' computer network), to enable McAfee 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 Ordering Activity and users. The Ordering Activity 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, or using the Software, Support or service subscription, the Ordering Activity and users agree to the McAfee Privacy Policy as attached and to the collection, processing, copying, backup, storage, transfer and use of this Data by McAfee and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of Ordering Activity's or user's own as part of the Software, Support or service subscription. McAfee will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the McAfee privacy policy as attached.

12) Audit.

Subject to applicable Government security requirements, upon thirty (30) days' prior notice McAfee may request, and the Ordering Activity must provide, a Software-facilitated system-generated report (the "System Report") verifying the Ordering Activity's Software deployment. The Ordering Activity acknowledges 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, the Ordering Activity will prepare and provide to McAfee within the thirty (30)-day period an accurate Software deployment verification report for the Software. McAfee will only request the System Report (or Ordering Activity's prepared Software deployment verification report) one time per year and will not unreasonably interfere with the conduct of Ordering Activity's business.

13) Export Controls.

The Ordering Activity acknowledges that the Software is subject to U.S. and when applicable, European Union export regulations. The Ordering Activity shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. The Ordering Activity shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. The Ordering Activity is responsible, at Ordering Activity's 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" as an attached document to the GSA Schedule 70 contract. If McAfee receives notice that Ordering Activity is or Ordering Activity becomes identified as a sanctioned or restricted party under applicable law, then McAfee 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 Federal laws of the United States of America. Specifically, any disputes relating to this Agreement shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. 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. This Agreement contains no confidential or proprietary information and shall be available to the public, provided however, that other items identified in this Agreement, including but not limited to source code and other technical data, provided to Ordering Activity are Confidential Information and shall not be disclosed.

16) Miscellaneous.

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- a) Except for actions for non-payment or breach of McAfee'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) This Agreement together with the underlying negotiated Purchase Orders, represents the entire agreement between McAfee and the Ordering Activity and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon, different, conflicting, or additional provisions that may appear on any Purchase Order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by McAfee. 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 McAfee 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".

MCAfee TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

McAfee will provide Technical Support services in accordance with the following terms and conditions ("**Support Terms**"). All capitalized terms not defined herein are defined in the applicable licensing or terms of service agreement.

1. Definitions.

- a. "**Authorized Partner**" means any of McAfee's authorized distributors, resellers or other business partners.
- b. "**Cloud Client Software**" means Software that facilitates Ordering Activity's access and use of the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.
- c. "**Cloud Services**" means the cloud services that McAfee provides to Ordering Activity as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
- d. "**Ordering Activity**" means the entity which has purchased Products and to which Intel provides Support.
- e. "**Grant Letter**" means any written (electronic or otherwise) confirmation notice that Intel issues to Ordering Activity confirming Products and Support purchased by Ordering Activity, including without limitation Ordering Activity's Support Level entitlement, the Grant Number, the Support Period and download details.
- f. "**Grant Number**" means a unique number communicated by Intel in a Grant Letter confirming an Ordering Activity's Support entitlement and is required when accessing Support.
- g. "**Hardware**" means McAfee branded hardware equipment purchased from McAfee or its Authorized Partners, but excludes any Software or other intangible products.
- h. "**Product(s)**" means McAfee's Software and Hardware product specified in a Grant Letter or Cloud Services and Cloud Client Software purchased from McAfee or an Authorized Partner.
- i. "**Support**", "**Technical Support**" or "**Technical Support and Maintenance**" means the support services for McAfee Products purchased by Ordering Activity either from McAfee or from McAfee's Authorized Partner which are dependent on the Support Level purchased.
- j. "**Software**" means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Ordering Activity.
- k. "**Support Period**" means the effective time period for which the Ordering Activity has purchased Support that is confirmed in a Grant Letter or in the case of Cloud Services means the effective time period for which the Ordering Activity has purchased the Cloud Services 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 McAfee Support offering purchased by Ordering Activity and defined at: <https://support.mcafee.com/supportoptions>.
- n. "**Upgrade**" means any and all improvements in the Cloud Services or Software which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- o. "**Updates**" means updates to the content of the Cloud Services or Software, 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 Cloud Services or Software which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

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2. **Provision of Support.** McAfee will provide Support to Ordering Activity during the Support Period at the Support Level that has been purchased by Ordering Activity and is confirmed to Ordering Activity in a Grant Letter or in the case of Cloud Services, based on the initial order or renewal. Ordering Activity will not be entitled to receive Support outside of the Support Period.
3. **Updates and Upgrades.** McAfee grants to Ordering Activity a non-exclusive, non-transferable license to use Upgrades and Updates provided by McAfee during the Support Period as a part of purchased Support. Such Upgrades and Updates are subject to the terms of the license granted by McAfee to the Ordering Activity for the Software. With the exception of Cloud Services, (a) Ordering Activity shall promptly download, distribute and install all Updates as released by McAfee during the Support Period and (b) McAfee strongly suggests that Ordering Activity also downloads, distributes and installs all Upgrades as released by McAfee during the Support Period. Ordering Activity acknowledges that any failure to do so could result in Ordering Activity'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.
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 Services will be supported. Notwithstanding any of the foregoing, Support is subject to McAfee's End-of-Life Policy as an attached document to the GSA Schedule 70 contract. It is Ordering Activity's responsibility to review McAfee's Product Support Lifecycle webpage at: <http://www.mcafee.com/us/support/support-eol.aspx> to determine whether a Product qualifies for Support. Furthermore, Ordering Activity proactive Support notifications can be accessed by subscribing to McAfee Support Notification Service (SNS) available at <http://sns.snssecure.mcafee.com>.
5. **Response Times.** McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <https://support.mcafee.com/charters>. Access to McAfee'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.** McAfee uses commercially reasonable efforts to provide work-around solutions or patches to reported problems with Products. With Ordering Activity's prior authorization, McAfee may perform remote diagnostics to work on reported problems. In the event Ordering Activity declines remote diagnostics, McAfee and Ordering Activity may agree to on-site Technical Support which is subject to an additional fee and reasonable travel and expenses, for which the Ordering Activity is responsible.
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. **Reinstating Out-of Maintenance Support.** If an Ordering Activity elects to terminate or allow its support services to lapse or expire, the Ordering Activity will be required to pay for the time that has lapsed since the end of such prior support services and the fees for the entire next annual period in accordance with the GSA Schedule Pricelist. Unless otherwise agreed upon by the parties, 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 Ordering Activity. Upon purchasing Support for a Product, Ordering Activity must purchase the same Support Level for all Product units owned, used or licensed by Ordering Activity that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Ordering Activity per Support Region.
9. **Acquired Company Products.** From time to time McAfee may acquire other companies and continue to support the products licensed or cloud services offered 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 McAfee 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.** McAfee has no obligations to, (a) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (b) provide Support for Hardware damaged by or Hardware failures caused by Ordering Activity (c) import or export Ordering Activity 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 McAfee specifications or (e) provide Cloud Services Support for issues arising from any violation of the Cloud Services Agreement.
11. **Obligations of Ordering Activity.**
 - a. **Support Process:** Ordering Activity must report Product problems to McAfee Support organization, and be prepared to provide McAfee 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, (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes, (vi) technical contact information and (vii) a detailed description of the problem. McAfee may request that Ordering Activity takes certain actions to determine whether the problem or error is related to the Product, or other item. Ordering Activity must reasonably cooperate with McAfee during this process.
 - b. **Access:** Ordering Activity shall provide McAfee with sufficient, free and safe access to the Products, Ordering Activity's computer systems networks and facilities in the event that it is agreed that McAfee will provide on-site support at Ordering Activity's location or facilities or that McAfee will perform remote diagnostics. McAfee will conform to Ordering Activity's security requirements before

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gaining access to Ordering Activity's facilities, provided such requirements are issued in writing to McAfee reasonably prior to accessing such facilities.

- c. **Backup and Restore:** Ordering Activity must keep adequate backup copies of data, databases, and application programs and agrees that Ordering Activity 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 McAfee or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Ordering Activity originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <https://support.mcafee.com/hardwarelocationmatrix> (provided for informational purposes only).
- b. **Hardware Return:** Prior to returning any Hardware to McAfee for repair or replacement, Ordering Activity must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Ordering Activity proprietary or confidential information that prevent McAfee from exchanging, repairing or replacing the Hardware, (ii) Ordering Activity has obtained a return authorization from McAfee, including a return material authorization number (a "**RMA Number**"). Hardware returned to McAfee becomes the property of McAfee at the time it is received by McAfee and Ordering Activity shall assume ownership of all replacement Hardware provided by McAfee to Ordering Activity upon shipment by McAfee.
- c. **Restrictions:** Ordering Activity must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from McAfee. Ordering Activity must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from McAfee or breach any tamper seal on the Hardware.
- d. **Inspection Period:** McAfee reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents in consideration of a separate fee set forth in the Purchase Order and to request Ordering Activity to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.

14. Resident Support Account Manager and Resident Product Specialist Terms.

- a. If Ordering Activity purchases a Resident Support Account Manager ("**RSAM**") or Resident Product Specialist ("**RPS**"), McAfee will provide an RSAM or RPS to provide on-site certain Support that Ordering Activity has purchased from McAfee. Additional information on the description and scope of the RSAM's and RPS's roles and responsibilities can be found at <http://support.mcafee.com/documentation>.
- b. The RSAM or RPS will work during normal business hours as agreed upon between McAfee and Ordering Activity. The RSAM or RPS 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 or RPS's employment with McAfee end, McAfee will provide to Ordering Activity the name and phone number of a temporary Support Account Manager ("**SAM**") that will cover Ordering Activity's account until the RSAM or RPS returns. The temporary SAM will provide Support services remotely.
- c. Ordering Activity acknowledges and understands that the timeline to on-board at Ordering Activity's location is approximately ninety (90) days from the time of the notification of the requirement. During this period, McAfee will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RSAM or RPS. McAfee and Ordering Activity will work together in good faith to select the RSAM or RPS. In the event Ordering Activity rejects the candidate or delays in the selection of a reasonable candidate McAfee has offered for consideration, McAfee 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 McAfee customers.
- d. Ordering Activity acknowledges that McAfee employees are quickly deployed, and any delay in the selection of a candidate may:
 - (1) result in Ordering Activity 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.Ordering Activity also acknowledges that it might not be possible to retain a particular individual for the duration of the term of the Support Period. The use of an interim SAM is, on its own, not sufficient to warrant a refund of fees or entitle Ordering Activity to service credits.

15. Malware Awareness Program Terms.

- a. If, for the Support Period, Ordering Activity has purchased (1) Support for McAfee's ePolicy Orchestrator Product ("**ePO**"), and (2) either (a) an RSAM, (b) an RPS, or (c) a Malware Awareness Program ("**MAP**"), as part of Support (as defined hereunder) McAfee will produce for Ordering Activity, once during the Support Period at a time agreed by Ordering Activity and McAfee, a MAP report in McAfee's then-current standard form using data collected by McAfee through Ordering Activity's deployment of ePO.
- b. McAfee may change the standard form of the MAP report at McAfee's discretion to reflect developments in malware and other security threats, information captured by ePO, or for other reasons identified by McAfee.
- c. For the avoidance of doubt, (1) a license to ePO must be purchased separately by Ordering Activity in order for Ordering Activity to purchase Support for ePO, (2) a license to ePO is not included with Support, with the MAP report, or in connection with the MAP, but must be purchased separately by Ordering Activity, and (3) MAP is not included as part of Support unless Ordering Activity has separately purchased Support for ePO and has separately purchased an RSAM, an RPS, or MAP.
- d. The MAP report and its contents, excluding Ordering Activity's Confidential Information, are strictly confidential to McAfee, and, except to the extent expressed in the next sentence, McAfee owns and reserves all right, title, and interest therein and thereto. Upon delivery of the MAP report to Ordering Activity, McAfee grants to Ordering Activity a worldwide, royalty-free, perpetual, non-exclusive license under McAfee's McAfee intellectual property rights to use and make a reasonable number of copies of the MAP report, in the form originally furnished by McAfee to Ordering Activity, for Ordering Activity's own internal business purposes.

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- e. THE MAP AND MAP REPORTS ARE PROVIDED TO ORDERING ACTIVITY FOR ORDERING ACTIVITY'S INFORMATIONAL PURPOSES ONLY AND ON AN "AS IS" BASIS. MCAFEE DOES NOT
Section - REPRESENT OR WARRANT THAT MAP OR ANY MAP REPORT WILL IDENTIFY ALL MALWARE OR VULNERABILITIES. ANY OBSERVATIONS OR RECOMMENDATIONS GIVEN AS A PART OF MAP OR A MAP REPORT ARE GENERAL AND ARE NOT INTENDED AS SPECIFIC RECOMMENDATIONS OR COURSES OF ACTION. ORDERING ACTIVITY'S RELIANCE ON, ACTION ON OF, OR LACK OF ACTION ON ANY SUCH OBSERVATIONS OR RECOMMENDATIONS IS AT ITS SOLE RISK.

16. **Warranty.** MCAFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDY, AND MCAFEE'S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. MCAFEE SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF ORDERING ACTIVITY PROVIDES WRITTEN NOTICE OF THE BREACH TO MCAFEE WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS ORDERING ACTIVITY'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. MCAFEE 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).

17. **Limitation of Liability; Confidentiality; Audit; Export Control.** Ordering Activity agrees to these Technical Support and Maintenance Terms and Conditions as part of one or more product licenses or services agreements between McAfee and the Ordering Activity ("**Underlying Agreement**"). THE LIMITATION OF LIABILITY, CONFIDENTIALITY, PRIVACY, AUDIT AND EXPORT CONTROL PROVISIONS OF THE RELEVANT UNDERLYING AGREEMENT ARE INCORPORATED INTO THESE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.
18. **General.**
- a. **Recording:** In providing Support, McAfee may record all or part of telephone calls between Ordering Activity and McAfee for quality assurance and training purposes in compliance with applicable laws.
 - b. **Assignment:** The provision of Support is not assignable by Ordering Activity without the prior written consent of McAfee. Any attempt of assignment by Ordering Activity without such consent will be void. McAfee may subcontract its obligations to provide Support hereunder to another party, but with notice to the Ordering Activity.
 - 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.
19. **Entire Agreement.** The Support Terms and any additional terms referenced herein together with the underlying negotiated Purchase Order(s), constitute the entire agreement between Ordering Activity and McAfee with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon, different, conflicting, or additional provisions that may appear on any purchase order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement.

McAfee Cloud Services Agreement

McAfee, LLC. ("McAfee") and Customer (as identified in the Grant Letter) agree to the following McAfee Cloud Services Agreement ("Subscription Agreement"), the Supplemental Terms and Conditions set forth below or otherwise included with the pertinent Cloud Services or Software ("Supplemental Terms") and the terms as specified in the Grant Letter. If Customer does not agree to the terms in the Grant Letter, Customer should not execute this Subscription Agreement or the accompanying Purchase Order, and Customer must immediately notify McAfee to cancel the Cloud Services identified in the Grant Letter prior to accessing or using the Cloud Services or Software.

BY EXECUTING THIS SUBSCRIPTION AGREEMENT OR THE ACCOMPANYING GOVERNMENT PURCHASE ORDER IN WRITING, YOU AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THE APPLICABLE SUPPLEMENTAL TERMS AND GRANT LETTER) ON BEHALF OF CUSTOMER, AND YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT.

1. **DEFINITIONS.** For purposes of the Agreement, the following definitions apply:
- a. "Agreement" means this Subscription Agreement, the applicable Supplemental Terms, the Grant Letter.

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- b. "Annual Customers" means Customers who have a valid annual or multi-year contract for Cloud Services.
- c. "Channel Partner" means the McAfee partner identified in the Grant Letter through which the Customer purchased the Cloud Services.
- d. "Cloud Client Software" means Software that facilitates Customer's access and use of the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.
- e. "Cloud Services" means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
- f. "Control" means the possession of beneficial ownership of more than fifty percent (50%) of the voting power of the person or entity entitled to vote in the election of directors or, in the case of an entity that is not a corporation, the election of the corresponding managing authority.
- g. "Customer Data" means any data provided by Customer to McAfee by and through the Software, Cloud Services, Support and any other products or services offered under this Agreement. Customer Data includes Personal Data as defined in Section 9 (Privacy).
- h. "Documentation" means explanatory materials created by McAfee in printed, electronic or online form that accompany the Cloud Services or Software.
- i. "Grant Letter" means any written (electronic or otherwise) confirmation notice that McAfee issues to Customer confirming the Licensed Product and Support purchased, License Period, and other access and use details. A Grant Letter includes a Welcome Letter or other purchasing documentation entered into between Customer and McAfee or Channel Partner for the Licensed Product.
- j. "McAfee" means (i) McAfee, LLC, with offices located at 2821 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) McAfee Ireland 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) McAfee (Singapore) Pte Ltd., 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) McAfee Co. Ltd., 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) McAfee (Beijing) Security Software 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) McAfee 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.
- k. "Intellectual Property Rights" means all intellectual property rights and industrial property rights (throughout the universe, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including, without limitation, patent rights, copyrights, trade secret rights, and trademark rights.
- l. "License Period" means, with respect to Cloud Services or Software, the time period for which Customer has purchased the right to receive the Cloud Services or Software, or, with respect to Cloud Client Software, the time period for which Customer has purchased the right to receive Cloud Services that are accessed through the Cloud Client Software. The initial License Period is as specified in a Grant Letter.
- m. "Licensed Product" means all Cloud Services, Software or Documentation to which Customer has rightful access through a valid Grant Letter.
- n. "Malware" means applications, executable code, or malicious content that McAfee deems to be harmful.
- o. "Monthly Customer" means Customers who have a valid monthly contract for Cloud Services with no annual or multi-year commitment.
- p. "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, homeworker/teleworker home-based systems, file and print servers, e-mail servers, Internet gateway devices, storage area network servers (SANS), terminal servers and portable workstations connected or connecting to the server(s) or network. For Cloud Services, Node may also mean an instance of the specific Cloud Service or the number of Users or seats with access to the Cloud Services.
- q. "Open Proxy" means an HTTP server that allows third-party relay or proxy of web traffic.
- r. "Open Relay" means an SMTP Email server that allows third-party relay of Email messages.
- s. "Software" means each McAfee software program in object-code format that is licensed from McAfee under this Agreement, including Updates and Upgrades, or any object-code delivered to Customer.

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- t. "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" include "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."
- u. "Subsidiary" refers to any entity Controlled by Customer, but only for so long as that Control exists.
- v. "Support" means technical support provided as described in the then-current McAfee Technical Support and Maintenance Terms, which are attached hereto.
- w. "Throughput" means the amount of data or files sent from the Customer through the Cloud Services.
- x. "Updates" means updates to the content of the Cloud Services or Software, 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, and database updates for the Cloud Services or Software, which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- y. "Upgrades" means any and all improvements in the Cloud Services or Software which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- z. "User" means a unique individual whom Customer has authorized to use the Cloud Services or Software pursuant to Customer's license under this Agreement.

2. RIGHT OF USE AND RESTRICTIONS.

- a. Right to Access and Use Cloud Services. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide right to access and use the Cloud Services described in the Grant Letter, for up to the number of Users, Nodes, Throughput or other metering mechanism specified in the Grant Letter, solely for Customer's internal business use during the License Period. Unless otherwise specified by McAfee, Cloud Services that are designed to be accessed through Software as provided by McAfee may be accessed only through such Software.
- b. License to Install and use Cloud Client Software. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide license to install and use the Cloud Client Software made available by McAfee to Customer in connection with the Cloud Services, for up to the number of copies specified in the Grant Letter, on equipment owned or operated by or on behalf of Customer, as needed to access and use the Cloud Services described in the Grant Letter, solely for Customer's internal business use during the License Period. The Cloud Client Software is licensed, not sold, to Customer under the terms of this license. Customer may make a reasonable number of copies of the Cloud Client Software for back-up, archival, and disaster recovery purposes during the License Period. The Cloud Client Software must be de-installed and destroyed at the end of the License Period. If Customer enters into a contract in which a third party manages Customer's information technology resources ("Managing Party"), Customer may enable such Managing Party to use the Cloud Client Software on Customer's behalf, provided that (a) the Managing Party only uses the Cloud Client Software and Cloud Services for Customer's internal operations; (b) the Managing Party agrees to be bound by the terms of this Agreement, (c) Customer provides McAfee with written notice that a Managing Party will be using the Cloud Client Software on Customer's behalf, and (d) Customer remains responsible for all use of the Cloud Client Software and Cloud Services by the Managing Party.
- c. Updates and Upgrades. Customer must have an active subscription to the Cloud Services, or have an active Support Agreement for the Cloud Services, as applicable, to receive Updates or Upgrades for the Cloud Services, Cloud Client Software, and any On-Premise Software.
- d. User Licenses. User licenses cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Software or Cloud Services.
- e. Subsidiaries. Customer may permit its Subsidiaries to use the Software and Cloud Services in accordance with the terms of this Agreement but only while the entity qualifies as Customer's Subsidiary, and provided that (i) each Subsidiary agrees to be bound by the terms of this Agreement, and (ii) Customer is responsible for each Subsidiary's compliance with this Agreement.
- f. Restrictions. Customer may not access or use the Software or Cloud Services if Customer is a direct competitor of McAfee, or for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without McAfee's express written permission. Customer will not: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Software or Cloud Services available to any third party; (ii) use systems as an Open Proxy or Open Relay; (iii) modify, decompile, reverse engineer, or copy the Software or Cloud Services, or any of its components; (iv) use the Software or Cloud Services to conduct fraudulent activities; (v) attempt to gain unauthorized access to the Software or Cloud Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to McAfee, its provision of the Software or Cloud Services, or others; (vi) impersonate or misrepresent an affiliation with a person or entity; (vii) use the Software or Cloud Services to initiate or propagate Malware; (viii) use the Software or Cloud Services for any purpose that

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violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement; (each of (i) to (viii), a "Prohibited Use").

- g. **Reserved Rights.** The Cloud Services and Software, including, without limitation, their object code and source code, whether or not provided to Customer, are strictly confidential to McAfee. McAfee (or its licensors) owns exclusively and reserves all rights to the Cloud Services and Software, and Customer may not exercise any, right, title, and interest in and to the Cloud Services or Software, including, without limitation, all Intellectual Property Rights in and to the Cloud Services or Software, except to the extent of the limited rights and licenses granted to Customer in this Agreement. This Agreement is not an agreement of sale, and no title, Intellectual Property Rights, or ownership rights to the Cloud Services or Software are transferred to Customer pursuant to this Agreement. Customer acknowledges and agrees that the Cloud Services and Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Cloud Services and 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, database, and other updates in, of, or to the Cloud Services or Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of McAfee.
- h. **Right to Use Customer Data.** Customer hereby grants McAfee a limited, non-exclusive, royalty-free, license to access and use the Customer Data as necessary for (i) McAfee to provide the Software, Cloud Services and technical support to Customer during the applicable License Period; (ii) to maintain or improve the Cloud Services and Software and other security related products, including to develop Updates and Upgrades; (iii) for internal research for threat protection solutions, such as improved spam protection (unless Customer opts out of such uses through the options available in the console); (iv) for administration of the Agreement, and (v) for purposes set forth in McAfee's Privacy policies available at <http://www.mcafee.com/common/privacy/english/>. In addition, Customer acknowledges and agrees to the use or sharing by McAfee of aggregated, anonymized or pseudonomized Customer Data (such that it no longer identifies Customer or any individual) as a part of a larger set of statistics (for example, statistics describing the enterprise, amount of traffic, success rates, and the like) and that such data does not constitute Confidential Information.
- i. **Open Source Software.** Customer acknowledges that 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 McAfee to Customer under the terms of the applicable FOSS Code license for such component, and Customer's receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails Customer's 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 the Software or its Documentation.

3. BETA RELEASES AND EVALUATIONS. If Customer has signed up for an evaluation of Software or Cloud Services ("Evaluation Product"), or is given access to Software or Cloud Services identified as not generally available for commercial use, such as "Beta" or "Pre-Release" ("Beta Product"), then the provisions of this Section shall apply and shall control over any other conflicting terms of this Agreement. Customer's use of an Evaluation Product is limited to thirty (30) days unless otherwise agreed to in writing by McAfee, during which time Customer may access and use the Evaluation Product solely for Customer's internal evaluation to decide whether to purchase the right to use the Evaluation Product. McAfee reserves the right to materially change or discontinue Beta Products at any time and without notice to Customer. Access or use of a Beta Product is restricted to Customer's internal performance evaluation of the Beta Product. McAfee is not obligated to finally release any version of the Beta Product. Customer will report to McAfee unusual, unplanned, or out of the ordinary events observed in a Beta Product. McAfee has no obligation to provide any Support for Evaluation Products or Beta Products. Customer acknowledges that the Evaluation Products and Beta Products may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. CONSEQUENTLY, EVALUATION PRODUCTS AND BETA PRODUCTS ARE PROVIDED TO CUSTOMER SOLELY ON AN "AS IS" BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE EVALUATION PRODUCTS AND BETA PRODUCTS.

CUSTOMER ASSUMES ALL RISK OF USE OF EVALUATION PRODUCTS AND BETA PRODUCTS. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE

LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS SHALL BE LIMITED TO THE SUM OF FIFTY (50) UNITED STATES DOLLARS (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.

4. CUSTOMER OBLIGATIONS

- a. Customer is responsible for all activity occurring under Customer's Software, Cloud Services and Support accounts. Customer will provide McAfee with all information and assistance required to supply the Software or Cloud Services or enable Customer's use of the same. Customer will immediately notify McAfee of any: (i) unauthorized account use or other suspected security breach; (ii) unauthorized use, copying or distribution of Software, Documentation or Customer Data; and (iii) unusual performance of the Software or Cloud Services observed by Customer.
- b. Customer must obtain all necessary rights and permissions from Users. Customer represents and warrants that: (i) Customer has the legal rights and applicable consents to provide Customer Data to McAfee, (ii) Customer will comply with all applicable laws for processing and transferring Customer Data to McAfee and (iii) Customer retains adequate back-ups of Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Cloud Services rely on Customer Data as supplied by Customer, and McAfee is not liable for the content of Customer Data. McAfee does not assume any duty or obligation to correct or modify Customer Data.

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- c. As needed, Customer will provide McAfee contact information for Customer's system administrator, who is authorized to provide the information required to configure and manage the Cloud Services ("System Administrator"). Depending on the Cloud Services purchased, McAfee may provide Customer with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
 - d. Customer agrees to provide current and complete account Users' information as necessary for McAfee to manage Customer's account. Customer agrees to accept McAfee emails relevant to Customer's receipt of the Cloud Services at the e-mail address specified by its System Administrator.
 - e. Customer agrees that McAfee may rely on all information provided to McAfee by the Customer. McAfee may provide all notices, statements, and other communications arising under this Agreement (other than legal notices) to Customer through either e-mail, posting on the Cloud Services or other electronic transmission.
5. **TECHNICAL SUPPORT SERVICE.** The McAfee Technical Support and Maintenance Terms apply to the Software and Cloud Services. The McAfee Technical Support and Maintenance Term are attached hereto below.
6. **TERM; TERMINATION; LICENSE PERIODS.**
- a. Term. The term of this Agreement will continue until the termination of all License Periods, unless terminated sooner in accordance with this Agreement.
 - b. Termination.
 - 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, McAfee 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. Pursuant to FAR 52.233-1, upon termination of this Agreement, all License Periods will terminate. After the termination of the License Period for a particular Service, Customer agrees that McAfee has no obligation to retain Customer Data for that Service, which may be irretrievably deleted as part of McAfee's record and information management and in accordance with applicable laws. To the extent any Customer Data is stored by the Service, Customer is solely responsible for retrieving that Customer Data.
 - c. License Periods. The initial License Period for each of the Cloud Services (including any Cloud Client Software used to access the Cloud Services) or for any other Software is specified in the Grant Letter (the "Initial License Period").
 - d. End-of Life. McAfee's provision of the Cloud Services and Software is subject to McAfee's End-of-Life Policy attached hereto. Upon the End of Life date of the Cloud Services (as described in the End-of-Life Policy), the License Period for the Cloud Services (including Cloud Client Software used to access the Cloud Services) will terminate.
 - e. Suspension of Service. McAfee may suspend the Cloud Services: (a) if McAfee deems it necessary to prevent or terminate any actual or suspected Prohibited Use; or (b) upon notice to Customer if: (i) Customer commits a material breach of this Agreement; (ii) if McAfee receives notice from Channel Partner that Customer is in material breach of the Agreement, (iii) McAfee determines that the volume of data being transmitted or processed through the Cloud Services under Customer's account is significantly greater than the average use or may cause degradation of the Cloud Services for Customer or other customers; or (iv) in the event of a threat to the security and integrity of the hosted environment and/or Customer Data. McAfee may temporarily suspend the Cloud Services if McAfee determines that the volume of data transmitted or processed through the Cloud Services under Customer's account causes a degradation of the services. Temporary suspension of Cloud Services shall be without prejudice to any rights or liabilities accruing prior to or during the suspension, including Customer's obligation to pay fees.
 - f. Survival. Sections 1, 6-11, 13-18 and 20-29 will survive the termination (including by expiration) of this Agreement.
7. **PAYMENTS; TAXES; AUDIT.**
- a. Payments. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case payment obligations shall flow exclusively between Channel Partner and Customer, Customer will pay McAfee the fees set forth in the Grant Letter within thirty (30) days of the invoice date.
 - b. Transaction Taxes. Customer will pay all applicable transaction taxes, including, but not limited to, sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Customer under this Agreement ("Transaction Taxes"). Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Transaction Taxes shall be exclusively the responsibility of Channel Partner and Customer, McAfee will separately state on its invoices the Transaction Taxes that McAfee is required to collect from Customer under applicable law. Customer will provide proof of any exemption from Transaction Taxes to McAfee at least 15 business days prior to the due date for paying an invoice. If McAfee does not collect the required Transaction Taxes from Customer but is later required to remit such Transaction Taxes to any taxing authority, Customer will promptly reimburse McAfee for such Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of McAfee. McAfee shall state separately on invoices taxes excluded from the fees, and Customer agrees either to pay the amount of the taxes (based on the

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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.

- c. **Withholding Taxes.** All payments due from Customer will be made free and clear without deduction for any present and future taxes imposed by any taxing authority. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Withholding Taxes (as defined below) shall be exclusively the responsibility of Channel Partner and Customer, if Customer is required by applicable law to deduct or withhold income taxes from amounts payable to McAfee under this Agreement ("Withholding Taxes"), Customer will remit, and provide McAfee with evidence that Customer has remitted, the Withholding Taxes to the appropriate taxing authority and pay to McAfee the remaining net amount. Customer will provide written notice to McAfee of its intent to withhold (including details of the amounts and legal basis for the Withholding Taxes) at least 15 business days prior to the due date for any payments under this Agreement and will cooperate with McAfee to reduce any Withholding Taxes. If McAfee provides Customer with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Customer will apply the lower rate.
 - d. **Income Taxes.** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
 - e. **Audit.** McAfee has the right, at its expense, to audit Customer's compliance with the terms of this Agreement, and Customer will provide all records and information reasonably necessary for McAfee to successfully perform such audit. Such audit shall be conducted in a manner consistent with Government security requirements. If any audit reveals that Customer owes fees to McAfee, or the Channel Partner, McAfee or Channel Partner shall invoice Customer for such underpaid amounts. Customer consents to McAfee's disclosure of such audit results to the Channel Partner.
8. **CONFIDENTIALITY.** In connection with this Agreement, each party may receive or have access to confidential information and materials of the other party. As used in this Agreement, "Confidential Information" means information that (a) is designated as "confidential" or by similar words by the disclosing party at the time of disclosure and, if oral or visual, is confirmed as confidential by the disclosing party in writing within 15-days of disclosure; or (b) the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure; but Confidential Information does not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure, or (iv) is independently developed by the receiving party without the use of the other party's Confidential Information. Customer acknowledges that McAfee's Cloud Services access codes and nonpublic information regarding the Licensed Products and McAfee's Intellectual Property Rights are McAfee's Confidential Information. As between the parties, the disclosing party owns the Confidential Information it discloses to the receiving party. Each party will take reasonable precautions (at least as great as the precautions it takes to protect its own confidential information) to prevent unauthorized use or disclosure of the other party's Confidential Information in its possession. Neither party will (a) disclose any Confidential Information of the other party to any third party during the term of this Agreement and for as long thereafter as the Confidential Information remains competitively sensitive, but not in any event for less than 7 years following the termination of this Agreement, or (b) use any Confidential Information of the other party except in the performance of its obligations or exercise of its rights under this Agreement; but a party may disclose Confidential Information of the other party (i) to its employees, contractors or agents, on a need-to-know basis, under an obligation of confidentiality no less stringent than that set forth in this Section, and (ii) as required by law, provided that the receiving party notifies the disclosing party as soon as feasible and cooperates with the disclosing party's efforts to limit or avoid the disclosure. McAfee 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. **DATA PROTECTION.** The Software, Cloud Services or Support may employ applications and tools to collect Customer Data that includes one or more data elements that can be used to identify a natural person ("Personal Data"). For the purpose of the Agreement, with respect to Personal Data, Customer and McAfee acknowledge that McAfee is a Data Processor and Customer is a Data Controller.
- a. In accordance with the instructions provided by Customer through one or more orders under this Agreement, McAfee will collect, process, copy, backup, store, transfer and use (collectively "Process") Personal Data. Processing may take place in, from and to the United States, Europe, or other countries or jurisdictions, potentially outside of the Customer or User's own.
 - b. For Personal Data originating from Customer (for the purposes of the Standard Contractual Clauses the "Data Exporter") established in the European Economic Area and Switzerland (an "EU Transfer") the Standard Contractual Clauses will apply to the Processing by McAfee outside of the European Economic Area (who, for the purposes of the Standard Contractual Clauses shall be deemed the "Data Importer"). "Standard Contractual Clauses" mean the standard contractual clauses for the transfer of Personal Data from a Data Controller in the European Economic Area to Processors established in third countries under the EU Data Protection Directive 95/46/EC (the "Directive") or any legislation replacing the Directive, (or any alternative or successor Decision that approves new standard contractual clauses for transfers to Data Processors in third countries). The Standard Contractual Clauses are available on the European Commission's website at the following link: [Standard Contractual Clauses](#). The Standard Contractual Clauses will cease to apply if McAfee is certified under the EU/US Privacy Shield or if McAfee adopts Processor Binding Corporate Rules or an alternative recognized compliance standard for the lawful transfer of Personal Data (as defined in the Directive) outside the European Economic Area upon notice hereof by McAfee to Customer. If there is any conflict between the Standard Contractual Clauses and this Agreement, the Standard Contractual Clauses shall prevail. Customer is solely responsible for securing any privacy-related rights and permissions from individual persons and third parties as required by regulation, statute, or other law, or by Customer's internal policies or guidelines, in order to use the Licensed Products or disclose to McAfee any personally identifiable information.

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- c. Where required in support of the permitted uses under this Agreement, Personal Data may be shared with third parties, including vendors, suppliers and partners ("Sub-Processors"). McAfee will restrict Sub-Processors access to Personal Data to the extent needed for performance and will impose written contractual obligations that are no less protective of the Personal Data than those obligations set forth in this Agreement.
 - d. McAfee may use cookies to store user session information, access codes and application settings to ease site navigation processes.
 - e. McAfee will implement technical, organizational and administrative security measures in order to protect the Personal Data it Processes from unauthorized access and misuse while under McAfee's custody or control. McAfee restricts its personnel from Processing Personal Data without authorization and will impose appropriate obligations upon its personnel, regarding confidentiality, data protection and data security. McAfee will not disclose Personal Data to any third party (including any government agency, court, or law enforcement agency) except with written consent from Customer or as necessary to comply with the law or valid legal process (e.g., subpoena, warrant, or court order). If a third party makes a request to McAfee for access to or correction of Personal Data, McAfee will refuse such request and instruct the third party to request that Personal Data directly from Customer and provide the third party with Customer's contact information. If compelled to disclose Personal Data to a law enforcement agency or a third party, McAfee will endeavor to give Customer reasonable notice of the access request prior to granting such access, to allow Customer to seek a protective order or other appropriate remedy. If such notice is legally prohibited, McAfee shall take reasonable measures to protect the Personal Data from undue disclosure, as if it were McAfee's own Confidential Information being requested. McAfee will notify Customer without undue delay if it becomes aware of unauthorized access or misuse of the Personal Data it Processes under this Agreement and will take reasonable steps to mitigate the effects and to minimize any resulting damage.
10. **INTELLECTUAL PROPERTY.** The Licensed Products are the sole and exclusive property of McAfee or its licensors, who retain sole ownership of all right, title and interest in Licensed

Products, as well as any derivative works thereof. These ownership rights include all

Intellectual Property Rights. Customer agrees, on behalf of itself and its Subsidiaries, that

Customer and its Subsidiaries will take no action inconsistent with McAfee's Intellectual Property Rights. Customer agrees that McAfee has the unrestricted right to use suggestions and feedback provided by Customer regarding products and services of McAfee and its affiliates, without notice to, payment to or consent from Customer, and that Customer will treat such suggestions and feedback as the Confidential Information of McAfee, and not Customer. Customer retains all right, title and interest in and to Customer Data.

11. **LIMITED WARRANTY, REMEDIES AND DISCLAIMERS.**

- a. **LIMITED WARRANTY.** McAfee warrants that the Cloud Services will perform substantially in accordance with its Documentation. This warranty is personal to Customer and may not be assigned, transferred or passed-through to any third party.
THIS WARRANTY WILL NOT APPLY IF (i) THE CLOUD SERVICES OR SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR ITS DOCUMENTATION; (ii) THE SOFTWARE HAS BEEN MODIFIED BY ANY PERSON OR ENTITY OTHER THAN MCAFEE; OR (iii) A MALFUNCTION IN THE CLOUD SERVICES OR SOFTWARE HAS BEEN CAUSED BY ANY SYSTEMS, EQUIPMENT OR TECHNOLOGY NOT SUPPLIED BY MCAFEE.
 - b. **LIMITATION OF REMEDY.** The sole and exclusive remedy, and McAfee's entire obligation and liability, for McAfee's breach of warranty under this Agreement is for McAfee to repair or replace the Cloud Services to conform with its Documentation. If McAfee is unable to do so, McAfee may, in its own discretion, allow Customer to terminate the Agreement immediately upon notice to McAfee. In such event, if Customer paid fees directly to McAfee and not to a Channel Partner, McAfee will provide to Customer a pro-rata refund of the fees paid under this Agreement for the remainder of the then- current monthly or annual term.
 - c. **EXCLUSIONS; DISCLAIMERS.**
- 1. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 11(a) (Limited Warranty), ALL LICENSED PRODUCTS, SUPPORT, AND OTHER ITEMS ARE PROVIDED TO CUSTOMER "AS IS" AND "WITH ALL FAULTS" AND MCAFEE MAKES NO REPRESENTATIONS OR WARRANTIES, AND 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.
 - 2. WITHOUT LIMITATION, MCAFEE DOES NOT REPRESENT OR WARRANT ANY OF THE FOLLOWING: (i) THAT ANY LICENSED PRODUCT, DEVICE, NETWORK, SUPPORT, OR SYSTEM WILL OPERATE UNINTERRUPTED OR BE FAILSAFE OR ERROR-FREE; (ii) THAT ANY LICENSED PRODUCT, DEVICE, ADVICE, REPORT, OR DATA, WILL BE FREE FROM ERRORS OR COMPLY WITH ANY PARTICULAR LAW; (iii) ANY BUSINESS RESULTS CUSTOMER MAY ACHIEVE; (iv) THAT ANY OR ALL SYSTEM VULNERABILITIES OR WEAKNESSES WILL BE DISCOVERED; OR (v) COMPLETE PROTECTION AGAINST ANY SECURITY THREATS OR OTHER POSSIBLE RISKS. CUSTOMER WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION 11(c) (Exclusions; Disclaimers).
 - 3. THE LICENSED PRODUCTS MAY FAIL AND ARE NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH RISK SYSTEMS.

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MCAFee HAS NO RESPONSIBILITY FOR ALL 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 CUSTOMER'S USE OF THE PRODUCTS ON OR IN A HIGH RISK SYSTEM, INCLUDING, WITHOUT LIMITATION, THOSE THAT (a) COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, OR (b) ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH RISK SYSTEM DEPENDS OR DEPENDS ON THE FUNCTIONING OF THE PRODUCTS OR THAT THE FAILURE OF ANY PRODUCT CAUSED A HIGH RISK SYSTEM TO FAIL. As used herein, "High Risk Systems" means any 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, trains boats or vehicle navigation or communication systems; air traffic control; weapons systems; nuclear facilities; power plants; medical systems and facilities; and transportation facilities.

4. Third Parties. THE SOFTWARE AND CLOUD SERVICES MAY CONTAIN INDEPENDENT THIRD PARTY PRODUCTS AND RELY UPON THEM TO PERFORM CERTAIN FUNCTIONALITY, INCLUDING MALWARE DEFINITIONS OR URL FILTERS AND ALGORITHMS. MCAFee MAKES NO WARRANTY AS TO THE ACCURACY OF ANY SUCH THIRD PARTY INFORMATION.
 5. Internet Delays. CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAY AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MCAFee IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS.
 6. Security. No data transmission over the Internet can be guaranteed to be secure. McAfee is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside McAfee's control. Customer is responsible for maintaining the security of its networks, servers, applications and access codes.
12. **PARTNER ACCESS**. Customer acknowledges and agrees that if the Cloud Services are purchased through a Channel Partner, the Channel Partner may have access to: (1) Customer Data; and (2) system administration of Customer's account, including the ability to configure the account and applicable policies.
13. **LIMITATIONS OF LIABILITY**.

Section - A. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL MCAFee OR ITS

LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, COMPUTER OR SYSTEM FAILURE OR MALFUNCTION, COSTS OF OBTAINING SUBSTITUTE SOFTWARE OR CLOUD SERVICES, WORK STOPPAGE, DENIAL OF ACCESS OR DOWNTIME, SYSTEM OR SERVICE DISRUPTION OR INTERRUPTION, OR ANY LOST, DAMAGED, OR STOLEN DATA, INFORMATION, OR SYSTEMS. FURTHER, UNDER NO CIRCUMSTANCES WILL MCAFee OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATING TO ALLEGATIONS OR CLAIMS THAT THE CLOUD SERVICES OR SOFTWARE WERE NOT FAILSAFE, DID NOT OPERATE INTERRUPTION- OR ERROR-FREE, OR DID NOT PROTECT AGAINST ALL SECURITY BREACHES OR ALL POSSIBLE SECURITY THREATS, MALFUNCTIONS, MALICIOUS CODE OR OTHER VULNERABILITIES OR ERRORS IN ANY CLOUD SERVICES OR SOFTWARE CAUSED BY VIRUS, INFECTION, WORM OR SIMILAR MALICIOUS CODE, IN ALL CASES REGARDLESS OF LEGAL THEORY AND 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. 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.

Section - B. DOLLAR CAP. REGARDLESS OF WHETHER A CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN NO EVENT WILL THE AGGREGATE TOTAL LIABILITY OF MCAFee OR ITS LICENSORS UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT EXCEED (a) FOR MONTHLY CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (b) FOR ANNUAL

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CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, LESS THE AGGREGATE OF ALL AMOUNTS PAID BY SUCH LIABLE PARTY UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER ON ACCOUNT OF PREVIOUS EVENTS OF LIABILITY. THESE LIMITATIONS DO NOT APPLY TO MCAFEE'S INDEMNIFICATION OBLIGATIONS; TO MCAFEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR TO ANY LIMITATION TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

- c. RISK ALLOCATION. The exclusions and limitations of liability specifically provided by this Agreement allocate between the parties the risks under this Agreement, some of which may be unknown or undeterminable. The exclusions and limitations were a material inducement for the parties to enter into this Agreement, and the parties have relied upon them in determining whether to enter into this Agreement. Each party expressly agrees to these exclusions and limitations and acknowledges that without them, the fees charged for the Cloud Services or Software would be higher or would not be offered under this Agreement.
- d. ACTIONS. Except for claims related to non-payment, or to Customer's breaches of Section 2 (Right of Use and Restrictions), Section 8 (Confidentiality) or Section 21 (Compliance), neither party may bring any legal action for any relief arising out of any matter relating to this Agreement more than 6 years after the party knew or should have known of the event giving rise to the claim or action.

14. **[RESERVED]**

15. **MCAFEE INDEMNITY.**

- a. McAfee will indemnify and, at its election, defend Customer against claims asserted against Customer in any suit or proceeding for direct patent or copyright infringement, or for McAfee's trade secret misappropriation, asserted against the Cloud Services or Software, as and in the form provided by McAfee under this Agreement alone and not in combination with anything.
- b. Notwithstanding anything else, McAfee has no obligation under this Section 15 (McAfee Indemnity) with respect to the following: (a) any claim (such as a counterclaim) that is made in response to a suit or proceeding first filed by Customer, including, without limitation, alleging patent infringement; or (b) any claim to the extent actually or allegedly based on any of the following: (i) elements or features in, or operation of, software, services, or other material not supplied by McAfee, (ii) McAfee's inclusion or use of software, services, technology, or material provided by Customer, (iii) McAfee's compliance with Customer's designs, specifications, or instructions, (iv) modification of any Software by anyone other than McAfee, (v) use of any Cloud Services or Software where that use is contrary to the specifications or instructions for use, or the terms of this Agreement, (vi) combination of any Cloud Services or Software with anything, (vii) the Cloud Services or Software implements or complies with, in whole or in part, as provided or when used, a Standard, (viii) Customer willfully infringed, (ix) McAfee, Customer, or the Cloud Services or Software indirectly infringes, including by inducing or contributing to another's infringement, or (x) activity that occurs after Customer is notified of the claim and is provided with modifications or other action that would avoid the claimed infringement.
- c. McAfee's indemnity obligations are conditioned on Customer's prompt written notice to McAfee of a claim and on Customer's tender to McAfee of the right to control and conduct the defense and any settlement of the claim, to the extent permitted under 28 U.S.C. § 516. Customer must fully and timely cooperate with McAfee and provide McAfee with all reasonably requested authority, information, and assistance. McAfee is not responsible for any costs, expenses, or compromise incurred or made by Customer without McAfee's prior written consent.
- d. At its option, McAfee will control and conduct the defense and any settlement of indemnified claims. McAfee, in its sole discretion and at its own expense, may (a) procure for Customer the right to continue using the Cloud Services or Software; (b) replace any affected Cloud Services or Software with non-infringing Cloud Services or Software; (c) modify any affected Cloud Services or Software so that it becomes non-infringing; or (d) upon McAfee's receipt of Customer's written representation and promise that it has removed all instances of the affected Software and will not use the affected Software and Cloud Services, credit or refund to Customer a pro-rata portion of the amounts already paid by Customer for the affected Cloud Services for the remainder of the applicable License Period.
- e. The indemnity provided in this Section 15 (McAfee Indemnity) states McAfee's entire obligation and liability and Customer's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Cloud Services or Software. This indemnity is personal to Customer and may not be assigned, transferred, or passed through to any third party.
- f. 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.

16. **WAIVER.** A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the party agreeing to the waiver.

17. **GOVERNING LAW; DISPUTE RESOLUTION.** This Agreement and any dispute arising out of or relating to it will be governed by the Federal laws of the United States, without regard to conflict of laws principles. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (1980).

18. **NOTICES.** All legal notices to McAfee under this Agreement must be addressed to "Attention: Legal Department" 5000 Headquarters Dr., Plano, TX 75024. All legal notices to Customer may be sent using the contact information on file with McAfee, as specified in the registration information provided by Customer when purchasing or registering for the Cloud Services. Notices shall be deemed effective upon receipt. It is Customer's obligation to ensure McAfee has the most current contact information.

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19. **[RESERVED]**
20. **ASSIGNMENT.** Neither party may assign this Agreement, whether by contract, operation of law or otherwise, without the prior written permission of the other party. Any attempt by Customer to assign this Agreement, including any rights, duties, or obligations under this Agreement, without the other party's written consent will be a material breach of this Agreement and will be null and void.
21. **COMPLIANCE.** Each Party will comply with all applicable laws in the conduct of its business with respect to its rights and obligations under this Agreement, including, without limitation, applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws. Customer may not, directly or indirectly, export or transmit any Licensed Products or technical data (or any part thereof) or any process or service that is produced by any Licensed Products, to any country to which such export or transmission is restricted by applicable law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any such other applicable governmental entity as may have jurisdiction over such export or transmission. Customer will not use the Licensed Products for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, demilitarization, destruction, processing, use, configuration, adaption or modification of any defense, military, intelligence, nuclear, or space article or activity, or missile technology including, without limitation, those items enumerated on (a) Wassenaar Arrangement's Sensitive List, Very Sensitive List and/or Munitions List; (b) the International Traffic in Arms Regulations ("ITAR") United States Munitions List ("USML," 22 C.F.R. pt. 121); or (c) the Common Military List of the European Union, unless authorized by the U.S. Government by regulation or specific license. Customer will not discuss, disclose, or release to McAfee any Confidential Information directly related to any defense, military, intelligence, nuclear, or space article or activity. Customer will not transfer, resell, divert, export or re-export any Licensed Products or any related technical information or materials (i) into any U.S. embargoed countries, or (ii) to any person or entity listed on a denial order published by the U.S. government or any other applicable government. Customer represents and warrants that neither the Bureau of Industry and Security nor any other agency or government has suspended, revoked or denied Customer's export privileges and that Customer will not provide any Licensed Products to any person or entity whose export privileges have been suspended, revoked, or denied. McAfee products may require authorization from the U.S. and other applicable authorities including, without limitation, the European Union, prior to export, import or use restrictions in other countries. Additional information regarding compliance with export control laws can be found at: <http://www.mcafee.com/us/about/export-compliance.aspx>.
22. **NOTICE TO U.S. GOVERNMENT END USERS:** The Software and Cloud Services are deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, if either is applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Cloud Services by the United States Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
23. **FORCE MAJEURE.** Excusable delays shall be governed by FAR 52.212-4(f).
24. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between McAfee and the Ordering Activity with regard to Cloud Services and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee and duly warranted Contracting Officer. However, this Agreement, including without limitation its termination, has no effect on any signed nondisclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail absent any agreed-upon different, conflicting, or additional provisions that may appear on any purchase order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement.
25. **SEVERABILITY.** The Parties intend that if a court holds that any provision or part of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision or part to the minimum extent necessary to make it valid and enforceable, or if it cannot be made valid and enforceable, the court will sever and delete the provision or part from this Agreement. Any change to or deletion of a provision or part of this Agreement under this Section will not affect the validity or enforceability of the remainder of this Agreement, which will continue in full force and effect.
26. **REMEDIES.** All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.
27. **RELATIONSHIP.** The relationship of McAfee and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement (a) gives either party the power to direct and control the day-to-day activities of the other party; (b) constitutes the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (c) allows either party to create or assume any obligation on behalf of the other party. The relationship contemplated by this Agreement is non-exclusive and does not prohibit either party from entering into any arrangements with any third parties. Each party understands and acknowledges that (a) the other party may develop or acquire technology, software, hardware, and data for its own products and services, and that existing or planned products and services developed or acquired by a party, may contain ideas or concepts similar or identical to those in the Confidential Information or Licensed Products under this Agreement; and (b) entering into this Agreement does not preclude a party from developing or acquiring any products without obligation to the other party.
28. **SUPPLEMENTAL TERMS; GRANT LETTER.** In the event of a conflict between a Grant Letter, the Supplemental Terms and/or the Subscription Agreement, the Supplemental Terms shall control over the Grant Letter and Subscription Agreement, but solely as to the relevant Service, and the Subscription Agreement shall control over the Grant Letter.
29. **THIRD PARTIES.** All warranty disclaimers and limitations of remedies and damages in this Agreement that are applicable to McAfee (including, without limitation, the warranty disclaimers and limitations of liability) also extend to and apply in respect of McAfee's affiliates, third party supplies

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and licensors who are GSA Schedule 70 contract holders. Except as provided in this Section (Third Parties), the parties do not intend, nor may any clause of this Agreement be interpreted, to create under this Agreement any obligations or benefits to, or rights in, any third party from either McAfee or Customer.

Section - SUPPLEMENTAL TERMS AND CONDITIONS

A. On-Premise Software License

The following terms and conditions ("Supplemental Terms") apply to all Customers using OnPremise Software, and are incorporated into the Agreement:

1. **DEFINITIONS.** Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
 - a. "On-Premise Software" means Software that is identified in the applicable Grant Letter and that can be used without any Cloud Services. On-Premise Software may also include additional features or functionality that can be accessed only with either a current subscription or active support contract to certain Cloud Services, as required by the specific offering.
2. **ON-PREMISE SOFTWARE LICENSE AGREEMENT.** All On-Premise Software is delivered subject to the McAfee End User License Agreement ("EULA"), which is attached hereto. The terms of this Subscription Agreement and the Supplemental Terms and Conditions are intended to supplement the EULA with respect to On-Premise Software.
3. **CLOUD SERVICES REQUIREMENT.** Certain features or functionality of the On-Premise Software require either a current subscription or an active support contract to access accompanying Cloud Services. Customer's purchase of a license for On-Premise Software includes only the features and functionality of the On-Premise Software that do not require Cloud Services, and does not entitle Customer to the accompanying features and functionality of the Cloud Services.
4. **UPDATES AND UPGRADES.** After Customer's purchased support period for On-Premise Software expires, Customer has no further rights to receive any Updates or Upgrades to the On-Premise Software.

B. Free Services

The following terms and conditions ("Supplemental Terms") apply to all Customers using Free Services, and are incorporated into the Agreement:

1. **DEFINITIONS:** Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
 - a. In addition to the definition set forth in the Subscription Agreement, "Cloud Services" includes free versions of the cloud services that McAfee provides to Customer as specified in one or more Grant Letters, including (i) any features or functionality included in a paid subscription for which McAfee no longer charges or which McAfee offers to Customer at no charge in McAfee's sole discretion, and (ii) other features or functionality that McAfee makes available to Customer without charge, that is labeled as "Pre-Release," "Limited Release," "Beta" or otherwise identified by McAfee as experimental, untested, or not fully functional, and which is not a time-limited trial for Customer's evaluation purposes (each "Free Services"). "Free Services" also includes any accompanying Software or service that McAfee provides without charge to Customer as a courtesy and in McAfee's sole discretion.
2. **LICENSE PERIOD.** For Free Services, subject to the terms of the Agreement, the License Period continues for as long as McAfee makes such Free Services available to Customer.

McAfee may choose to provide Free Services to Customer prior to, during, or after Customer's paid subscription to Cloud Services or Software, and any use is subject to the terms of the Agreement then in effect for as long as the Free Services are made available to Customer.
3. **UPDATES / ASSISTANCE / END-OF-LIFE.** Any updates or end-user assistance provided for Free Services are provided at McAfee's sole discretion and may be discontinued at any time. From time to time, at McAfee's sole discretion, McAfee may elect to discontinue certain Free Services or particular features of the Free Services ("Free Services Termination"). Free Services are specifically excluded from McAfee's End-of-Life-Policy. Instead, McAfee will make commercially reasonable efforts to provide thirty (30) days' prior notice to Customer of a Free Services Termination. McAfee has no obligation to provide any Support to Customers for the Free Services.
4. **COMMUNITY FORUM.** At their convenience, Customers may exchange ideas and technical insight regarding the Free Services on the Cloud Visibility - Community Edition page located at: <https://community.mcafee.com/community/business/data/cloud-visibility>.

McAfee does not endorse, warrant or guarantee any information posted on this site and any use of the information is taken at Customer's sole risk.
5. **DISCLAIMER.** Customer acknowledges that the Free Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. **CONSEQUENTLY, THE LIMITED WARRANTY IN SECTION 11(a) OF THE SUBSCRIPTION AGREEMENT DOES NOT APPLY TO FREE SERVICES. INSTEAD, FREE SERVICES ARE PROVIDED TO CUSTOMER SOLELY ON AN "AS IS" BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE FREE SERVICES. CUSTOMER ASSUMES ALL RISK OF USE OF FREE SERVICES.** In addition, Customer acknowledges that McAfee has not promised or guaranteed to Customer that Free Services will be announced or made available to anyone in the future, that McAfee has no express or implied obligation to Customer to announce or introduce Free Services, and that McAfee is not obligated to introduce a product similar to or compatible with Free Services or any updates to any Free Services.

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6. **NO SERVICE LEVEL AGREEMENT.** Any Service Level Agreement that, in McAfee's sole discretion, is offered or may be offered for the Cloud Services, does not apply to Free Services. In the event of a covered outage or other issues with the Free Services, Customer and other users of the Free Services may not make a claim under the Service Level Agreement.
7. **LIMITATION OF LIABILITY. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS IN CONNECTION WITH THE FREE SERVICES SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS (\$100) (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.**
8. **FREE SERVICE DATA STORAGE.** McAfee has no obligation to retain any Customer Data or other Customer information submitted or collected through the Free Services. McAfee may delete any such Customer Data and other Customer information at its own discretion and without prior notice to Customer.

Cookie 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 McAfee (including certain McAfee Affiliates and Service Providers) (collectively "we" or "us") uses 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 "Tracking Technologies" for the rest of Notice. We will also describe what options you may have regarding Tracking Technologies. This Notice covers the use of Cookies that may be used in connection with McAfee's websites, mobile websites, and apps (the "Sites"). In some cases, we may use Tracking Technologies to collect information that is personally identifiable, or that can become personally identifiable if we combine it with other information. In such cases, our [Privacy Policy](#) will apply in addition to this Cookie Notice.

What Are Tracking 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 website. Cookies are widely used by website owners and their service providers or partners to make their websites operate, work more efficiently, and provide analytic information.

These are the different types of Cookies used 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 website 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. One way we do this is to recognize and count the number of visitors and see how they move around a 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 delivery of advertisements or other communications to you that are designed to be more relevant to your apparent interests. Delivery of interest-based advertising may involve us, our service providers and partners such as publishers, data management platforms, and demand side platforms. For example, if you look at a page on one of our Sites, we may cause an advertisement to be delivered to you, on our Site 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.
- **Flash Cookies.** A Flash Cookie is a small data file placed on a computer using Adobe Flash or similar technology that may be built into your computer or downloaded or installed by you to your computer. We use these technologies to personalize and enhance your online experience, facilitate processes, and personalize and store your settings. Flash cookies may help our website visitors to, for example, set volume preference associated with a video experience, play games, and perform surveys. They help us improve our sites by measuring which areas are of greatest interest to guests. They may be recognized by other sites or by our marketing or business partners. Flash cookies are different from browser cookies and the cookie management tools provided by your browser may not remove Flash cookies. [Click here](#) to learn how to manage privacy and storage settings for Flash cookies. If you disable Flash cookies or other similar technologies, please be aware that you may not have access to certain features and services that make your online experience more efficient and enjoyable.
- **Web Beacon.** A Web Beacon is a very small clear picture file used to keep track of your navigation through a single website or a series of websites. They may also be referred to as "Web Bugs" or "Clear Gifs." Web Beacons may be used with cookies to gain an understanding of how a website's users navigate through the website.

How Do We Collect and Use Other Information?

We and our service providers may use Tracking Technologies for a variety of purposes, including to:

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- 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.
- 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, information regarding your use of our Sites, or information we receive about you from third parties. We may use this combined data for purposes consistent with our Privacy Policy, including for marketing.

How Long Do Tracking Technologies Stay on My Device?

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.

Other Cookies operate from the time you visit our Site 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.

Who Puts Tracking Technologies on My Device?

Cookies may be placed on your device by McAfee as the Site operator. These Cookies are called “first party” Cookies. Some Cookies may be placed on your device by a party other than McAfee. These Cookies are called “third-party” Cookies. For example, a McAfee 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 emails, 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 emails 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 McAfee Site or who clicked on links or graphics included in email newsletters received from McAfee. It is also used as a tool to compile aggregated statistics about how McAfee 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 McAfee 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 us, McAfee 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. We identify some resources in this Notice (see “**How do I Manage Tracking Technologies**” below) that can help you.

Ads may be delivered to you based on your online or mobile behavior (on McAfee Sites or other sites), your search activity, your responses to one of our advertisements or emails, the pages you visit, your general geographic location, or other information. These ads may appear on our Sites or on third-party websites. The technology partners with whom we work to help us conduct interestbased 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 our Sites or other websites or properties, based on your visits to, and activities on, our Sites and other sites.

How Do I Manage Tracking Technologies?

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 fully use the Site.). You can find information online about how to manage Cookies. For example, the following links 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](#) 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. Websites that use Adobe Flash may store Flash Cookies. Flash Cookies may also be known as Flash Local Shared Objects (LSOs). McAfee may use Flash LSOs to provide special content, such as video and animation playback.

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To find out more about interest-based advertising and your choices, visit these sites: [Digital Advertising Alliance](#), the [Network Advertising Initiative](#), and the [InteractiveAdvertising 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 McAfee respond to a Do Not Track Signal?

There is currently no industry agreed upon response to a Do Not Track signal. At this time, McAfee Services and Sites do not respond to a user's Do Not Track signal.

Privacy

We are committed to good privacy practices. For more information about our approach to privacy see our [Privacy Notice](#) and the [Code of Conduct](#).

How to Contact Us

If you have any questions about how we use Cookies, you can contact us using the information set forth below. Please include your contact information and a detailed description of Cookie concern.

McAfee LLC

Attn: Legal Department – Privacy Office,
5000 Headquarters Drive, Plano TX 75024

- Email: privacy@mcafee.com
- Telephone: +1 972-963-7902

This Notice updates and supersedes previous versions. We may change this Notice at any time. Changes to this Notice must be agreed to by both parties in writing prior to becoming effective. The

"LAST UPDATED" section at the bottom of this page lists when this Notice was last revised. LAST UPDATED: April 3, 2017

McAfee Privacy Notice

Effective Date: April 3, 2017

This Notice provides information about data we collect, use, and share, and our commitment to using the personal data we collect in a respectful fashion.

- Privacy Notice Overview
- Why Do We Collect Information and Data?
- What Kinds of Personal Information Do We Collect?
- How Do We Collect Information?
- How Do We Use Personal Information?
- When Do We Share Personal Information?
- Third-Party Advertising
- What Security Measures Do We Have?
- What Choices Do You Have About Your Personal Information?
- Data Retention
- Children's Privacy
- Data Transfers
- Links to Other Websites
- Contact Us

We at McAfee, LLC and our affiliates with whom you have a business relationship ("McAfee", "we", "us") care deeply about privacy, security, and online safety, all of which are a significant part of our essential mission: to protect users of our products and services ("you", "your") from the risks of theft, disruption, and unauthorized access to their online information and activities. This Privacy Notice ("Notice") is designed to inform you about how we collect, use, and share your personal information.

This Privacy Notice applies to personal information we obtain from individuals through our websites, products, services, and web-based applications (collectively, the "Services"). In addition, some of our products and services, such as our wide array of mobile applications ("Apps"), are subject to a separate privacy notice. If a separate privacy notice applies to a particular product or service, for example, such as our Mobile App Privacy Statement, we will post it on our website (our "Site").

When you access or use our Services, you acknowledge that you have read this Notice and understand its contents. Your use of our Services and any dispute over privacy is subject to this Notice and our Terms of Service (including any applicable limitations on damages and the resolution of disputes).

As McAfee grows, our business changes, and we may update this Notice, or other privacy notices that we establish for individual products, at any time as we deem appropriate to reflect those changes. Both parties must agree to the changes in writing prior to the changes going into effective.

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Why Do We Collect Information and Data?

We rely on a wide variety of information to run our business. In some instances, this information may include data that could be used to identify a particular individual, otherwise referred to as **Personal Information**. In this Notice, we will provide multiple examples of how Personal Information we collect may be used and why it is important. For example, when a consumer purchases one of our products we must collect their name, email address, and payment information to complete the transaction. Some of the reasons that we collect Personal Information include to:

- Provide our products and services, including our Apps and this Site, and improve them over time;
- Allow you to download and purchase products and services;
- Personalize and manage our relationship with you, including introducing you to products or services that may be of interest to you or to provide customer support;
- Investigate, respond to, and manage inquiries or events;
- Work with and respond to law enforcement and regulators; and
- Research matters relating to our business such as security threats and vulnerabilities.

What Kinds of Personal Information Do We Collect?

The following are examples of the type of Personal Information that may be collected. The specific kind of information collected will depend on the Services used:

- Contact information (such as name, email address, mailing address, and phone number);
- Payment information (including payment card numbers, billing address, and bank account information);
- McAfee purchase or product/service use history;
- Account log-in credentials;
- Your location;
- Your interests;
- Demographic information;
- Photographs, images, video, and related hash values; or
- Biometric data such as fingerprints or voice recordings.

In addition to the above, we may also collect other information related to user interactions with or use of our Services ("Usage Data"). Much of this Usage Data, for example, clickstream data and aggregate usage statistics, is generally not personally identifying. On the other hand, some of this Usage Data either alone or when combined or linked with your Personal Information, may allow your identity to be discovered. In such cases, we treat the combined data as Personal Information. In many cases, Usage Data is gathered automatically by systems or technology such as cookies (see more information about Information Collected Automatically below).

The following are examples of the type of Usage Data that may be collected by McAfee from your web browser or related to your interactions with our products and services:

- Details about your computers, devices, applications, and networks (including IP address, browser characteristics, device ID, operating system, and language preferences);
- Activities on our websites and usage patterns of products and services (including referring URLs, dates and times of website visits, and clickstream data);
- Details about Internet, App, or network usage (including URLs or domain names of websites you visit, information about applications that attempt to access your network, or traffic data);
- Data about files and communications, such as potential malware or spam (which may include computer files, emails and attachments, email addresses, metadata, and traffic data, or portions or hashes—a hash file is a file that has been converted into a numerical string by a mathematical algorithm—of any of this information).

How Do We Collect Information?

We collect information directly from you, as well as automatically through your use of our Services and, in some cases, from third parties.

Information That You Give Us: Typically the information we collect directly from you are your contact details, payment or billing data, and relationship information like the content of customer service requests that you initiate, reviews you submit on our products, or responses to surveys. You decide how much information to share with us in most cases, but not sharing required information may limit your ability to engage in certain activities, such as payment information required to complete a purchase.

Information Collected Automatically: When you use or interact with our Site and Services, we receive and store information generated by your activity, like Usage Data, and other information automatically collected from your browser or mobile device. This information may include your IP address; browser type and version; preferred language; geographic location using IP address or the GPS, wireless, or Bluetooth technology on your device; operating system and computer platform; purchase history; the full Uniform Resource Locator (URL) clickstream to, through, and from our Site, including date and time; products you viewed or searched for; and areas of our Site that you visited. We also may log the length of time of your visit and the number of times you visit and purchase or use the Services. We may assign you one or more unique identifiers to help keep track of your future visits.

In most cases, this information is generated by various tracking technologies. Tracking technologies may include "cookies," "flash LSOs," "web beacons" or "web bugs," and "clear GIFs". You can read about how we use cookies and other tracking technologies here and also learn about the choices you can make to limit their use.

Please see our Cookie Notice for more information about the cookies and other similar technologies that we use.

Information from Other Sources: If we receive any information about you from other sources, we may add it to the information we already have about you. For example, if we receive a list of subscribers to a publication and we note that you are a user of our products and also a subscriber, we may combine that information. Examples of information we may receive from other sources includes updated delivery or payment information which we use to correct our records, purchase or redemption information, customer support or enrollment information, page view, search term and search result information from business partners, and credit or identity information which we use to help prevent and detect fraud.

How Do We Use Personal Information?

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Every time you turn on a device, connect to a network, or open a file, you are exposed to significant risk from hackers, malware, spyware, and other forms of unauthorized access to your data and systems. Security products and services, such as McAfee's, are designed to help protect you from these risks.

Security and Threat Detection. By collecting and processing data, including Personal Information, McAfee can help to predict threats and better protect you, your devices, and your information. For example, McAfee may use your information to:

- Analyze data sent to/from your device(s) to isolate and identify threats, vulnerabilities, suspicious activity, and attacks;
- Assess the reputation of a device or file to advise you on whether access should be granted;
- Participate in threat intelligence networks and conduct research and analysis, including market and consumer research and trend analysis; and
- Adapt products and services to respond to new threats.

Business Uses. In addition, we may use Personal Information for other business purposes, including to:

- Analyze users' behavior when using McAfee products and services to customize preferences;
- Establish and manage McAfee accounts;
- Collect and process payments and complete transactions;
- Provide customer support, manage subscriptions, and respond to requests, questions, and comments;
- Communicate about, and administer participation in, special events, programs, surveys, contests, sweepstakes, and other offers and promotions;
- Enable posting on our blogs and other communications;
- Customize, measure, and improve our websites, products, services, and advertising;
- Analyze and develop new products, services, and websites;
- Perform accounting, auditing, billing, reconciliation, and collection activities;
- Prevent, detect, identify, investigate, respond, and protect against potential or actual claims, liabilities, prohibited behavior, and criminal activity;
- Comply with and enforce applicable legal requirements, agreements, and policies; and
- Perform other activities consistent with this Notice.

Processing as Part of the Services. We also process certain information as an integral part of our Services. If you install or use one of our products or services, software will operate in the background of your computer system or device environment to perform specific security and privacy tasks including:

- Spam protection;
- Virus protection;
- Intrusion detection, prevention, and protection;
- Threat prevention and prediction;
- Network defense;
- Data encryption;
- Mobile device lockdown; and ☐ Back-up and recovery activities.

Product Updating and Reporting. Our products and services 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 or modernized. For example, products and services may transmit report files to McAfee. 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. McAfee also uses the information to adapt the product to conform to user preferences based on actual use.

Section - SUPPORTING FREE PRODUCTS AND SERVICES

We continually make a variety of free products available to our customers. In order to keep these products free, we may use information collected through some of our products, such as information about websites you visit, to support interest-based advertising by us or our partners. We do this by sharing information with trusted third parties about your browser and web browsing activity that does not identify you personally. These companies are not permitted to use the information we provide to them to identify you, and are required to use the information we provide only in accordance with our privacy commitments to you. Our products that use data in this way also include built-in features allowing you to opt out of this sharing.

When Do We Share Personal Information?

We respect the importance of privacy. Other than as provided in this privacy policy, we do not sell your Personal Information, nor do we share it with unaffiliated third parties for their own marketing use, unless we have your consent or we are required by law to do so. Generally, we may disclose the information we collect, including Personal Information, in order to facilitate our provision of the Services or communications with customers (e.g., to service providers who perform functions on our behalf), to operate our business, to advertise or promote our Services, to facilitate changes to or transfers of our business, as required by law, or with your consent.

We may share Personal Information in the following ways:

- Current and future members of the McAfee family of companies for the purposes described in this Notice, such as to: (i) provide services and content (e.g., registration, sales, and customer support); (ii) help detect and prevent illegal acts and violations of our policies; and (iii) guide our decisions about our products, services, and communications;
- Other users where integral to particular Services where you have chosen to share such information, or where you have posted user content (e.g., comments and reviews, social media posts, photos or locations to groups you create);
- Authorized service providers who perform services for us (including cloud services, data storage, sales, marketing, investigations, payment processing, customer support, and bill collection). Our contracts with our service providers include commitments that they agree to limit their

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use of Personal Information and to comply with privacy and security standards at least as stringent as the terms of this Privacy Notice. Remember that if you provide Personal Information directly to a third party, such as through a link on McAfee's website, the processing is typically based on their standards (which may not be the same as McAfee's);

- If we believe disclosure is necessary and appropriate to prevent physical, financial, or other harm, injury, or loss, including to protect against fraud or credit risk.
- To legal, governmental, or judicial authorities, as instructed or required by those authorities or applicable laws, or in relation to a legal activity, such as in response to a subpoena or investigating suspected illicit activity (including identifying those who use our services for illegal activities). We reserve the right to report to law enforcement agencies activities that we in good faith believe to be illegal.
- In connection with, or during negotiations of, an acquisition, merger, asset sale, or other similar business transfer that involves substantially all of our assets or functions where Personal

Information is transferred or shared as part of the business assets (provided that such party agrees to use such Personal Information in a manner that is consistent with this Notice).

- In order to provide marketing and advertising content about our products, or other products which may interest you, we may share your Usage Data, as well as anonymized information with third-party ad networks, social media partners, and similar providers. A more detailed discussion of our relationship with third-party advertisers is set forth below under the heading "**Third-Party Advertising**".
- With others only after obtaining your consent. If we want to share Personal Information other than as permitted or described above, we will provide you with a choice to opt in to such sharing and you may choose to instruct us not to share the information.

Section - YOUR CALIFORNIA PRIVACY RIGHTS - SHINE THE LIGHT LAW

McAfee does not share your Personal Information with non-affiliated third parties for their own marketing use without your permission.

Third-Party Advertising

Advertising is a way for McAfee to subsidize many of our free products and services and also provides a way to inform you about products or services that we think may be of interest to you. We have agreements with third-party advertising companies to display or deliver ads to you while you are on our Site or using some of our other products, like Apps. These third-party advertisers may automatically receive Usage Data when this happens. They may also download cookies to your computer, or use other technologies such as JavaScript and "web beacons" (also known as "1x1 gifs" or "clear gifs") to measure the effectiveness of their ads and to personalize advertising content. Doing this allows the advertising network to recognize your computer or device each time they send you an advertisement. In this way, they may compile information about where individuals using your computer or browser saw their advertisements and determine which advertisements are clicked. Third-Party Advertisers may also serve advertisements to you on other websites, based on their tracking of what content you looked at or interacted with on our Websites. Other than as described in this Notice, we do not give third-party advertisers your contact information such as email address, phone number, or address.

See our Cookie Notice to learn more about how McAfee uses tracking technologies like cookies and how you can opt out of such technologies and advertising. This Notice does not cover the use of cookies or other tracking technologies by any of our advertisers.

If you have provided our Apps with access to your location, our mobile advertising partners may use your location to target advertisements to you. You can use the location features on your device to disable this targeting.

Do Not Track Disclosure: Our Site does not respond to Do Not Track signals. You may, however, disable certain tracking as discussed above (e.g., by disabling cookies). For more information about Do Not Track signals, please click here.

What Security Measures Do We Have?

We use administrative, organizational, technical, and physical safeguards to protect the Personal Information we collect and process. Our security controls are designed to maintain an appropriate level of data confidentiality, integrity, and availability. We regularly test our website, data centers, systems, and other assets for security vulnerabilities.

McAfee handles payment card data in a manner consistent with the Payment Card Industry Data Security Standard (PCI-DSS). For example, when you make a payment on our website using your credit card, we use SSL encryption for transmission of the credit card number.

What Choices Do You Have About Your Personal Information?

We offer certain choices about how we communicate with our users and what Personal Information we obtain about them. Many McAfee products allow users to make choices about the Personal Information collected.

- You may choose not to receive marketing communications from us by clicking on the unsubscribe link or other instructions in our marketing emails, visiting the My Account section on our website, or contacting us as specified in the "Contact Us" section below.
- Many McAfee products contain settings that allow users or administrators to control how the products collect information. Please refer to the relevant product manual or contact us through the appropriate technical support channel for assistance.
- To remove your Personal Information from a McAfee website testimonial, please contact customer service.

If you chose to no longer receive marketing information, McAfee may still communicate with you regarding such things as security updates, product functionality, responses to service requests, or other transactional, non-marketing/administrative related purposes.

Section - HOW YOU CAN ACCESS AND CORRECT INACCURACIES

If you subscribe to McAfee products, you can access and correct the Personal Information in your profile by visiting My Account. Alternatively, you may request access or changes to, or removal of, your Personal Information in accordance with applicable laws by contacting us as indicated below. For some requests, an administrative fee may be charged (where permitted by law). We will advise you of any applicable fee prior to performing your request.

Data Retention

The time periods for which we retain your Personal Information depend on the purposes for which we use it. McAfee will keep your Personal Information for as long as you are a registered subscriber or user of our products or for as long as we have another business purpose to do so and, thereafter, for no longer than is required or permitted by law, or McAfee's Records Retention Policy, reasonably necessary for internal reporting and reconciliation purposes, or to provide you with feedback or information you might request. The information we collect may be stored and processed in servers in the United States and wherever McAfee and our service providers have facilities around the globe.

Children's Privacy

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Some of McAfee's Services provide security features that may be used to monitor children's activity online, physical location, or when they are using a registered device. McAfee does not knowingly collect Personal Information from children under the age of 13 without first obtaining parental consent in accordance with applicable laws like the Children's Online Privacy Protection Act of the United States and similar laws around the world. For products that may be used with children, there are options for parents or legal guardians to delete their child's profile at any time and at the parent or guardian's option. We do not knowingly use Personal Information from children for any purpose except to deliver the products that are designed to offer family-related or child-related protection Services. If you believe we have collected information from your child in error or have questions or concerns about our practices relating to children, please notify us using the Contact Us details below and we will promptly respond.

Data Transfers

McAfee is headquartered in the United States, and we have operations, entities, and service providers in the United States and throughout the world, including in India. As such, we and our service providers may transfer your personal information to, or access it in, jurisdictions that may not provide equivalent levels of data protection as your home jurisdiction. We will take steps to ensure that your personal information receives an adequate level of protection in the jurisdictions in which we process it. If you are located in the European Economic Area or Switzerland, we provide adequate protection for the transfer of Personal Information to countries outside of the EEA or Switzerland through a series of intercompany agreements based on the Standard Contractual Clauses authorized under the EU Data Protection Directive 95/46/EC.

Links to Other Websites

Our Site may contain links to other websites for your convenience and information. These websites may be operated by companies not affiliated with McAfee. Linked websites may have their own privacy policies or notices, which we strongly suggest you review if you visit those websites. We are not responsible for the content, privacy practices, or use of any websites that are not affiliated with McAfee.

Contact Us

If you have questions or concerns regarding this Privacy Notice, or would like to update information we have about you or your preferences, please contact us by email at privacy@mcafee.com or by one of the following additional methods: In the United States by calling us at +1 972-963-7902 or by writing to us at:

Attn: Legal Department – Privacy Office,
5000 Headquarters Drive, Plano TX 75024

In the European Economic Area by calling us at +44 (0) 1753 217 500 or by writing to us at:

227 Bath Road
Slough, Berkshire
SL1 5PP United Kingdom

In Japan by calling us or by writing to us at:

Personal Information Protection Manager McAfee Co. Ltd.

Shibuya Mark City West,
Dougenzaka 1-12-1,

Shibuya-ku,
Tokyo, 150-0043

Tel: (switchboard) 03-5428-1100

Mobile App Privacy Statement

- [What We Collect](#)
- [How We Use Your Information](#)
- [How We Share Your Information](#)
- [Your Choices](#)
- [Security](#)
- [International Transfers](#)
- [Data Retention](#)
- [Children and Minors](#)
- [Notice to California Residents](#)
- [Updates to This Privacy Notice](#)
- [Contact Us](#)

Effective Date: April 3, 2017

McAfee, LLC and our affiliates with whom you have a business relationship ("McAfee", "we", "us") respect your privacy. This Mobile App Privacy Statement ("**App Privacy Notice**") describes our privacy practices regarding the collection, use, and disclosure of your personal information through our mobile apps (our "app" or "apps").

1. What We Collect.

Information you provide:

We may require that you register to use the apps. Registration may require personal information like your email address and name and information like a unique user name or password. In some cases, you may be able to sign in using your Google or Facebook account credentials which will then be used only for the purpose of account access and account management.

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The functionality of the apps may require some access to personal information in order to use the apps. This may include contact information such as your name, address, phone number, email address, and unique log-in credentials. The apps may also access unique numeric identifiers assigned to your device such as your mobile advertising ID/IDFA, Bluetooth device IDs, and mobile device ID.

Other types of information may also be collected by the apps such as:

- IDs of any Bluetooth devices connected to your mobile device
- Media such as photos and videos that you store or consent to give us access to
- Device details such as OS, device ID, and device type
- List of other apps on your device and information about those applications
- Your location
- Details of your McAfee product subscriptions such as products used, registration data, product key, and the like
- Information about websites that you view and visit
- Battery levels, on/off device status

Access to some of the above information (such as your location) may be restricted by your mobile device's operating system, and your consent will be requested before we may access this information. It is your choice whether you wish to provide consent; however, if you do not provide consent, some functionality of the apps may be restricted.

You may also have the opportunity to voluntarily provide additional information from time to time that is not required by the apps but may improve your experience. **Information we collect automatically from your device and apps**

In addition to the above information, the apps automatically collect other device-related information and app performance data. This includes crash logs to assess application usability and performance, length of time spent on the apps, and other aggregate or statistical information. Location data may be automatically collected, such as by GPS, for the purpose of providing certain features of the apps. This data is transmitted and stored separately from any personal information processed by the apps and contains no information that can reasonably be used to directly identify you.

2. How We Use Your Information.

In addition to providing and improving the apps and related services, we use your personal information to communicate with you, including to send you notifications and alerts and for in-app advertising and marketing (in accordance with your marketing preferences), to respond to your requests (such as for technical support or customer service), and for research and analytics. In addition to the uses described in this App Privacy Notice, we may use your personal information as otherwise permitted by applicable law.

Some apps may use information about the websites you visit and the apps installed on your device to show you more relevant ads. When we do this, we will provide you notice of these activities and the opportunity to opt out.

3. How We Share Your Information.

Section - THIRD-PARTY SERVICE PROVIDERS AND AFFILIATED COMPANIES

Other than as described in this App Privacy Notice, we do not sell, rent, or share information that identifies you personally like your name, email address, phone number, or address. We may need to share the information we collect through the apps with third-party service providers in order to support the apps, their features, and their services, including customer services and technical support, and with our affiliated companies.

We may share the advertising identifier assigned to your device along with information about the websites you visit or the apps installed on your device with third-party service providers so that they can use that information to help show you ads that are more likely to be relevant to your interests. This information does not identify you personally.

Some of our providers may use your information in a format that does not directly identify you for their own business purposes (such as to improve their own services). For example, they may track the number of customer support calls required before an issue is resolved in order to improve resolution time. Our contracts do not permit our third-party service providers to use your personal information in ways that are inconsistent with this App Privacy Notice.

Section - THIRD-PARTY SERVICE PROVIDER TERMS

Some of our third-party service providers may have additional terms and choices that apply to your information which we are required to make available to you as follows:

Google Maps: If the app uses Google Maps' API, it is governed by [Google's Privacy Policy](#). Certain Maps API(s) store and access cookies and other information on end-users' devices.

The Facebook Audience Network: We are a member of the Facebook Audience Network. This provides a way for companies to display their ads to Facebook users in apps and websites that are also part of the network. Facebook helps tailor the ads so that they are relevant and useful. You can use Facebook's ad preferences tool to view, add, and remove your preferences, including whether you receive these tailored ads, including in our

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apps. We encourage you to review [Facebook's data policy and privacy basics](#). Ads in our apps may also include an Ad Choices opt-out icon so you can opt out directly from our app.

Section - OTHER WAYS YOUR PERSONAL INFORMATION MAY BE SHARED

Your personal information may also be used and shared with law enforcement, government representatives, or others if required by law, in connection with a sale purchase, merger, or reorganization, or when we believe it is necessary to protect our rights, property, or safety, to comply with a judicial proceeding, court order, or legal process—such as evidence in litigation in which we are involved. In the case of a sale or purchase we will instruct the entities to which we transfer your personal information only to use it in a manner consistent with this App Privacy Notice.

4. Your Choices.

You may request access to view, modify, update or remove the personal information that we have related to your use of the apps by contacting us using the details supplied in the "Contact Us" section below. You can unsubscribe from our marketing-related messages at any time by following the unsubscribe instructions included within each marketing-related message sent to you or by using the details in the "Contact Us" section. We will comply with requests within the time frames required by applicable law. Please note that if you choose not to receive marketing-related emails from us, we may still send you important administrative and transactional messages related to the apps and services ("service notifications").

You may have the option to limit the use of information about your device for purposes of serving ads that are targeted to your interests through your device settings (called "Limit Ad Tracking" on iOS devices and "Opt Out of Interest-Based Advertising" on Android devices).

5. Security.

We take reasonable technical, administrative, and physical measures to protect the personal information provided, but you must understand that no app or internet transmission can ever be guaranteed 100% secure. Where personal data collected is stored on your device, security is through your device's own secure storage facilities. You should also take care to protect the secrecy of your account user name and password and to protect the personal information that is stored on your device.

6. International Transfers.

We are a U.S.-based, global company. As such, we may transfer, store, and process your personal information in the United States (U.S.) or to any of our group companies worldwide when processing that information for the purposes described in this App Privacy Notice. We may also transfer your personal information to our third-party service providers, who may be located in a different country than you.

Personal information collected by us from the European Economic Area and Switzerland is protected in accordance with applicable legal requirements implemented through intra-group agreements incorporating the standard model contractual clauses recognized by the Directive 95/46/EC of the

European Parliament and the Council, also known as the Data Protection Directive ("the Directive").

7. Data Retention.

We retain account information, such as your name, account credentials, and email for the lifetime of your account. However, if you are not an active user of the app (as determined by number of log-in attempts) your account and all data will be deleted after a reasonable period of time. If your data is deleted, you may have to establish a new account to begin using the app again. In some products, data may be stored locally on your device as well as remotely on our (or our service provider's) systems. Generally, if you delete the apps on your device, any data stored locally on the device will be deleted; however, data on servers elsewhere may remain. You can request that we delete your personally identifiable information on our app servers by sending a written request to us as instructed in the Contact Us section below. Your request must provide your name, any app-specific user ID, email address, and the name of any apps subject to your request. We will retain these communications for our record keeping purposes.

8. Use of 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 our products and services. We do not knowingly collect personal information from children without proper parental consent. If you believe that we may have improperly collected personal information from someone under the applicable age of consent in your country, 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.

9. Notice to California Residents.

Section 1798.83 of the California Civil Code requires us to tell you that we do not share your personal information with third parties for their direct marketing purposes.

10. Updates to this App Privacy Notice.

From time to time we may update this App Privacy Notice and/or our Privacy Notice for legal, regulatory, or business reasons. Any such changes will be presented for review and will be agreed to by both parties in writing

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11. Contact Us.

If you have questions or concerns about our privacy practices, you can send a letter to the postal address listed below. To help us most effectively respond to your query, please include your contact information, name of the Service or website, and a detailed description of your request or privacy concern.

McAfee LLC
Attn: Legal Department – Privacy Office
5000 Headquarters Drive, Plano TX 75024

- Email: privacy@mcafee.com
- Telephone: +1 972-963-7902

If you are located in the European Economic Area, please write to:
227 Bath Road
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