

EC America, Inc.

a subsidiary of  immixGroup

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



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: GSAAvantage.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

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

SIN 132-34 - MAINTENANCE OF SOFTWARE AS A SERVICE

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

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

SIN 132-50 - 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, 2017

EC America, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102
Phone: 703.752-0610
Email: ECA_Contracts@immixgroup.com
Website: www.ecamerica.com

Business Size:
Other 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
132-50	Training Courses
132-51	IT Professional Services
132-52	Electronic Commerce (EC) Services

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

SIN	Part Number	GSA Catalog Price
132-8	SMA-WMGT-1Y-S12	\$0.26
132-12	CON-ISV1-SMS-1	\$0.71
132-32	QRS-ENT4	\$0.17
132-33	3005855	\$0.01
132-34	999050	\$0.01
132-50	UDM-CAL-AM	\$8.39
132-51	CMPOF-EXOS-HTML-CONS	\$1,428.13
132-52	3009834-EZ	\$6.08

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 132-51 - 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 Attachment B.
- 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 Attachment B to this schedule pricelist appended hereto and incorporated herein.
- 11b. **Expedited Delivery:**
Quicker delivery times than those set forth in Attachment B 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 Attachment B, 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 ADM 4800.2F 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 Attachment B 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:

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

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

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

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

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

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

7. LEASE END/DISCONTINUANCE OPTIONS:

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

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

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

c. Returns:

- (i) Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the Ordering Activity shall, at its own risk and expense, have the Products packed for shipment in accordance with Manufacturer's specifications and return the Products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the Products to good working order shall be at Ordering Activity's expense.
- (ii) The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the Product exceeds normal wear and tear.
- (iii) Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.
- (iv) With respect to software Products, the Ordering Activity shall state in writing to the Contractor that it has:
 - (1) deleted or disabled all files and copies of the software from the equipment on which it was installed;
 - (2) returned all software Documentation, training manuals, and physical media on which the software was delivered; and
 - (3) has no ability to use the returned software.

8. UPGRADES AND ADDITIONS:

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

- (1) can be removed without causing material damage to the Product;
- (2) do not reduce the value of the Product; and

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

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

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

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

d. Leases of additions and upgrades must be co-terminus with that of the Product.

9. RISK OF LOSS OR DAMAGE:

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

10. TITLE:

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

11. TAXES:

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

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

(a) The Ordering Activity may purchase the Product provided on a lease or rental basis under this contract. The

Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

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

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

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the Product under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

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

1. GLOSSARY OF DEFINITIONS

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

b. **“Equipment”** shall mean the computer hardware identified on Attachment B 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 (c)(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 (c)(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 Attachment B 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 Attachment B 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 (c)(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 (c)(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 Attachment B.

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
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 Attachment B. 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 or 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.	Intermec Technologies Corporation
Adobe Systems, Inc.	Juniper Networks (US), Inc.
Appian Corporation	KBZ Communications, Inc.
Avizia	McAfee, Inc.
Barracuda Networks, Inc.	Multivista Franchise Systems, LLC
BlueCat Networks (USA), Inc.	NEC Corporation of America
Brocade Communications Systems, Inc.	NetScout Systems, Inc.
Centrify Corporation	Network Critical, Inc.
Check Point Software Technologies, Inc.	Nuance Communications, Inc.
Cisco Systems, Inc.	Palo Alto Networks, Inc.
Cisco WebEx, LLC	PHD Virtual Technologies, Inc.
Citrix Systems, Inc.	Polycom, Inc.
CommVault Systems, Inc.	Qualtrics, LLC
Covata USA, Inc.	Red Hat, Inc.
Cyviz, LLC	Riverbed Technology, Inc.
DataCore Software Corporation	Salesforce.com
EMC Corporation	SAP NS2
Enterasys Networks, Inc.	SAP Public Services, Inc.
Fortinet, Inc.	Siemens Industry, Inc.
Fujitsu Network Communications, Inc.	Sourcefire, Inc.
Gupta Technologies	Stonesoft
Infoblox, Inc.	TIBCO Software Federal, Inc.
	VBrick Systems, 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.

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

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

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

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

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

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

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

ADOBE SYSTEMS, INC.

ADOBE SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

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

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

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

1. Applicability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPIAN CORPORATION

APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

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

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

“Open Source Software” means any software which is subject to any of the following license terms: (A) prohibition on imposing restrictions on distribution of the software or any derivatives thereof or prohibition on imposing restrictions on aggregation with any other software; (B) prohibition on requiring royalties, fees or charges for the software or any derivatives thereof; (C) requirement to include and/or allow distribution of the software or any derivatives thereof in source code; or (D) requirement to grant users or licensees the right to access any source code of the software or any derivatives thereof.

- (vi) Use by Standard/Term Named Users. A Standard/Term Named User license allows a specific Named User to access the Appian Software an unlimited number of times during the term specified in the Order. The term shall commence as of the date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Standard/Term Named Users listed in the corresponding Order to use the Appian Software in accordance with this Agreement, and (II) associated standard Maintenance Services.
- (vi) Use by Fractional Named Users. A Fractional Named User license allows a specific Named User to access and use the Appian Software for up to one hundred (100) Sessions per year, in perpetuity. A Named User receiving a Fractional Named User license is referred to as a Fractional Named User. A Session is counted each time a Fractional Named User (I) authenticates into any one (1) copy of the Appian Software for two (2) hours or less, and (II) for each additional two (2) hour period, or part thereof, a Fractional Named User has access to the Appian Software after the initial two (2) hours following authentication. A Fractional Named User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one Session will be counted if a Fractional User authenticates into the Appian Software multiple times within two hours of the initial authentication. The number of Sessions shall be calculated on an annual basis, with the first year commencing upon the effective date of the corresponding Order, and with each subsequent one year period commencing upon the then current anniversary of the effective date of the corresponding Order. New orders for Fractional Named User licenses will not be accepted.
- (vii) Use by Fractional/Term Named Users. A Fractional/Term Named User license allows a specific Named User to access and use the Appian Software for up to one hundred (100) Sessions per year during the term described in the applicable Order. The term shall commence as of the effective date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Fractional/Term Named Users purchased in the applicable Order to use the Appian Software in accordance with the Agreement, and (II) associated standard Maintenance Services. A Session is counted each time a Fractional/Term Named User authenticates into any one (1) copy of the Appian Software. An additional Session will be counted for each additional two (2) hour period, or part thereof, a Fractional/Term Named User has access to the Appian Software after the initial two (2) hours following authentication. A Fractional/Term Named User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one Session will be counted if a Fractional User authenticates into the Appian Software multiple times within two hours of the initial authentication. The number of Sessions shall be calculated on an annual basis, with the first year commencing upon the effective date of the corresponding Order, and with each subsequent one year period commencing upon the then current anniversary of the effective date of the corresponding Order. Fractional/Term Named User license are only available for renewal to existing orders. New orders for Fractional/Term Named User license will not be accepted. In the event that purchase of Fractional/Term Named User licenses is lapsed or discontinued, reinstatement will not be permitted.
- (viii) Use of External Log-ons. An External Log-on entitles an End User to access the Appian Software for up to two (hours) at any time following the one (1) year period after its purchase. External Log-ons not used during the corresponding one (1) year term expire. External Log-ons must be renewed or cancelled in the same quantity as the initial External Log-on purchase, unless otherwise agreed to by Contractor and Ordering Activity in writing. An External Log-on is counted each time an End User (I) authenticates into any one (1) copy of the Appian Software for two (2) hours or less, and (II) for each additional two (2) hour period, or part thereof, an End User has access to the Appian Software after the initial two (2) hours following authentication. An End User's usage session shall expire two hours following the initial authentication in any two hour usage block. For the avoidance of doubt, only one External Log-on session will be counted if a particular End User authenticates into the Appian Software multiple times within two hours of the initial authentication. For the purposes of this paragraph, an “End User” is a third party who is not an Ordering Activity employee, contractor, or subcontractor. External Log-ons are non-transferable, non-sublicensable, and non-exclusive. An End User may only access the Appian Software made available by Ordering Activity over the Internet via a password and username. Prior to accessing the Appian Software, an End User must first accept binding and written legal terms and conditions with Ordering Activity which: (A) contain terms which are the same or substantially similar to those set forth herein, and (B) do not contain any other terms that would have the effect of overriding, contradicting or diluting the effect of the terms set forth herein. Contractor will not refund any External Log-on license fee to the extent the corresponding External Log-ons are not used prior to the end of the applicable license term. Ordering Activity must purchase a separate set of External Log-ons for each copy of the Appian Software that Ordering Activity uses to make the Appian Software available to End Users.
- (ix) Use of Internal Log-ons. An Internal Log-on entitles a specific Named User to access the Appian Software for up to two (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 misappropriates 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).

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 x 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

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.

- 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 COMMERCIALY REASONABLE EFFORTS, IN CONTRACTOR'S SOLE DISCRETION, TO REPAIR AND/OR REPLACE SUCH NON-CONFORMING SOFTWARE OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT. CONTRACTOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY RELATED TO ANY SECURITY SOFTWARE. ORDERING ACTIVITY ACKNOWLEDGES THAT SECURITY SOFTWARE DOES NOT GUARANTEE THE SECURITY OF ORDERING ACTIVITY'S NETWORK, AND THAT ORDERING ACTIVITY IS RESPONSIBLE FOR ALL OTHER ASPECTS OF SECURITY, INCLUDING WITHOUT LIMITATION, CORRECT INSTALLATION AND SETUP OF THE SECURITY FEATURES OF THE SOFTWARE AND ALL RELATED REQUIREMENTS, CORRECTLY CONFIGURED SECURITY POLICIES, SELECTION OF HARDWARE AND SOFTWARE (INCLUDING NETWORK SECURITY TOOLS), CORRECT INSTALLATION, CONFIGURATION, AND MAINTENANCE OF THE HARDWARE AND SOFTWARE, THE INTEROPERABILITY OF THE VARIOUS COMPONENTS OF ORDERING ACTIVITY'S NETWORK, AND A PHYSICALLY AND ELECTRONICALLY SECURE OPERATING ENVIRONMENT.
- 5.2 HARDWARE WARRANTY.** CONTRACTOR WARRANTS TO ORDERING ACTIVITY, FOR THE WARRANTY PERIOD SET FORTH IN CONTRACTOR'S QUOTATION FOR THE APPLICABLE HARDWARE THAT EACH UNIT OF HARDWARE SHALL BE FREE OF DEFECTS IN ANY MATERIAL RESPECT IN MATERIALS AND WORKMANSHIP AND SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH HARDWARE. THIS WARRANTY DOES NOT APPLY TO THOSE UNITS OF HARDWARE WHICH: (I) HAVE BEEN SERVICED OR ALTERED, EXCEPT AS EXPRESSLY AUTHORIZED BY CONTRACTOR; (II) HAVE NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH ANY INSTALLATION, HANDLING, MAINTENANCE OR OPERATION INSTRUCTIONS SUPPLIED BY CONTRACTOR; (III) HAVE BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE OR ACCIDENT; (IV) HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE OR TRANSPORTING; OR (V) INTEROPERATE WITH THIRD PARTY PRODUCTS, SUCH AS OPTICAL TRANSCIEVER 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

- 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.
- 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.
- 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.

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, Centrifly 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 Centrifly'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 Centrifly 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@centrifly.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@centrifly.com

Response times vary based on your support package and the priority level of the issue.

Priority Levels & Response Times

The Centrifly 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 Centrifly 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 Centrifly products licensed and covered by maintenance.

You can obtain the latest versions of Centrifly software through our Online Customer Support Portal: www.centrifly.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-nnnnnnnnn or 11-nnnnnnn (“n” is a digit).

“Severity” Definitions for Network Security product(s):

“Severity 1” means

- (a) an Error with a direct security impact on the product;
- (b) an Error isolated to Software or Appliance in a production environment that renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, system down;
- (c) a reported defect in the licensed product in a production environment, which cannot be reasonably circumvented, in which there is an emergency condition that significantly restricts the use of the licensed product to perform necessary business functions; or
- (d) inability to use the licensed product or a critical impact on operation requiring an immediate solution.

“Severity 2” means

- (a) an Error isolated to Software or the Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging;
- (b) a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions but does not completely restrict use of the licensed product; or
- (c) ability to use the licensed product, but an important function is not available, and operations are severely impacted.

“Severity 3” means

- (a) an Error isolated to the Software or Appliance that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;
- (b) a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions, while the defect can be easily circumvented; or
- (c) an Error that can cause some functional restrictions but it does not have a critical or severe impact on operations.

“Severity 4” means

- (a) a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; this is a minor problem and is not significant to operation; or
- (b) an anomaly that may be easily circumvented or may need to be submitted to Check Point Research and Development as a request for enhancement.

“Severity” Definitions for Endpoint Security product(s):

“Severity 1” means

- (a) an Error with a direct security impact on the product; or
- (b) an Error isolated to Software, for which there is no reasonable Workaround, which renders the product inoperative, causing the end-point devices to fail catastrophically, affecting more than 1000 end point devices or 35% of deployed client base (in any case more than 100 affected end-point devices) within a production environment (not pre-deployment or staging) where end-point devices have been interrupted and not recovered; e.g., severe and general deployment wide system impact, systems are down, making end-point devices unable to perform (even with reduced performance) necessary business operations even after a change of, and/or addition of procedures, configurations, applications, tools and/or data.

“Severity 2” means

- (a) an Error isolated to Software, for which there is no reasonable workaround, which substantially degrades the usability of the end-point devices, restricting the usage of and/or access to one or more necessary business functions without completely restricting the use of the licensed product, affecting more than 500 end-point devices or 25% of deployed client base (in any case more than 50 affected end-point devices) within a production environment (not pre deployment or staging) where the end-point devices and/or Software may have been interrupted but recovered, in part or completely; e.g., end-point devices are operative but with limited capacity, substantially impacting the end-point devices’ ability to perform one or more necessary business functions; end-point devices and/or Software are operative, but an important product function is unavailable or not operating; end-point devices and/or Software may have been interrupted but recovered, in part or completely; inability to connect to the Internet /Intranet; or

(b) an Error causing severe Software deployment/upgrade problems without prohibiting necessary business operations, affecting more than 500 end-point devices or 25% or more of the actual/intended client base (at least 50 devices affected); it may, or may not, be possible to circumvent the error, e.g., inability to install and/or upgrade product, without prohibiting the endpoint devices ability to perform necessary business operations; or business operations are not prohibited but may run with reduced performance.

“Severity 3” means

(a) an Error isolated to Software, for which there is a reasonable Workaround, or an Error that causes only a minor impact on the end-point client. Restriction in usage of one or more features of the licensed product with minor impact of necessary business functions. The Error can cause some functional restrictions but it does not have a critical or severe impact on operations, e.g., the endpoint device is operational but may experience performance or operational limitations; or
(b) an Error isolated to Software only affecting one or a limited number of individual end-point devices, that is not common for the installed end-point device population; it may, or may not, be possible to circumvent the error, e.g., an individual end-point device(s) is encountering issues not common for deployed end-point device client base.

“Severity 4” means a reported anomaly in the licensed product that does not substantially affect endpoint ability to perform normal business operations. This is a minor problem and does not constitute any significant limitation to products ability to allow normal business operation. An anomaly may be easily circumvented, e.g., a product cosmetic anomaly or documentation flaw; end-point devices and/or Software may have been interrupted but recovered.

“Site” means the physical location where System(s) are installed as specified by Ordering Activity in Ordering Activity’s User Center account.

“Software” means the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any Documentation supplied in conjunction with, and supplementing such programs, the foregoing being provided to Ordering Activity by way of electronic transmission or by being fixed in media furnished to Ordering Activity.

“Software Subscription” means registered access to modifications, corrections, and/or updates to Software; including Hot Fix Accumulators (HFAs), security fixes, Feature Packs, and/ or major upgrades, provided to Ordering Activity by unlimited web download access or by mail upon Ordering Activity’s request. Software Subscription is a deliverable for all Support Contracts.

“Shelf Spare Unit(s)” means Check Point Hardware unit(s) that is stored at Ordering Activity’s Site and which is reserved for Hardware replacement usage only in case of failure of Ordering Activity’s Hardware which is covered under Check Point On-Site Hardware Support Plan.

“Support” means the technical Support and Hardware replacement services provided by Check Point directly to Ordering Activity as set forth in this Agreement.

“System(s)” means the Hardware, Software and Documentation that have been provided to Ordering Activity by Check Point or Check Point’s authorized resellers/partners.

“TAC” means Check Point Technical Assistance Center, which is staffed by Check Point Support personnel providing assistance with diagnosis and resolution of defects and/or failures in Check Point products.

“Workaround” means a change in the followed procedures or data to avoid error without substantially impairing use of the product.

b. CHECK POINT SUPPORT OBLIGATIONS:

Upon Contractor’s acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Ordering Activity will be entitled to receive Support according to the features and benefits provided under that offering, subject to these terms and conditions.

i. Technical Support:

For Ordering Activities covered under a valid Check Point Support offering, technical Support will be provided pursuant to the terms of this Section “TECHNICAL SUPPORT.” Contractor through Check Point agrees to provide Support, where appropriate, to Ordering Activity, which may include but is not limited to, the following actions:

(a) Provide Ordering Activity with access to product update releases, related Documentation and knowledge articles, upon general commercial release;

(b) Provide Ordering Activity with access to TAC Technical Representatives, who will work with Ordering Activity to diagnose issues, and provide Problem Resolutions, including escalating the issue through TAC management as needed.

ii. Hardware Replacement. For Ordering Activities covered under Hardware Support, Contractor through Check Point will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in the Section “HARDWARE REPLACEMENT.”

iii. On-site Hardware Support. For those Ordering Activities whose Hardware Support level includes an on-site service feature, upon Ordering Activity’s request, after TAC determines that the hardware issue is related to a malfunction of one

of the Hardware components, and after a repair action plan has been defined, Contractor through Check Point will use commercially reasonable efforts to dispatch a Check Point Certified Onsite Technician or ACE Partner to the Site in accordance with the terms and timeframes of such plan as set forth on Exhibit A. Provision of on-site support is subject to the following limitations:

(a) On-site Hardware Support is limited to Advance Hardware Replacement only; it does not include on-site service for Software troubleshooting or any Software related issues.

(b) On-site Hardware Support service may not dispatch a certified technician on-site to help set up the RMA unit outside of Check Point's normal on-site service areas (<http://www.checkpoint.com/services/onsite-availability.html>). Under those situations, Check Point may provide a Shelf Spare solution under specific conditions to ensure a rapid unit replacement at the Ordering Activity's site. Ordering Activity will need to sign up for this service under a separate Shelf Spare Replacement Agreement.

(c) On-site service response times may be dependent upon the Ordering Activity's Site address for the Hardware, the timely arrival of replacement parts at Ordering Activity's Site, and accessibility to the Site. On-site Hardware Support is effective one (1) month from the day it was purchased.

iv. On-site Software Support for Critical Severity 1 Issues. For those Ordering Activities covered under Elite Support, the Ordering Activity shall contact Check Point TAC directly by telephone. After TAC confirms that the matter is a Severity 1 issue, TAC and the Ordering Activity will work diligently, with highly skilled, experienced engineers to resolve the critical situation and to restore operation. In the case the criticality of the issue remains or no progress is made, after four (4) hours, Contractor through Check Point will use commercially reasonable efforts to dispatch a local engineer to Ordering Activity's Site. If no local resources are available, travel arrangements will be made for the next available flight to the Ordering Activity's Site. The engineer will remain on-site until the issue is no longer defined as critical (an acceptable resolution or workaround was achieved) or up to three (3) days, with travel and expense included. Provision of on-site critical Severity 1 case support under Elite Support is subject to the following limitations:

(a) An Elite Ordering Activity is entitled up to three (3) visits on-site a year as required to resolve critical Severity 1 cases.

(b) On-site critical case Support is limited to Software Support only, and does not include on-site service for Hardware issues and Hardware replacement.

(c) On-site critical case Support may not be available for some Check Point Software products or in some geographic regions, and may require a set-up period before it can be made available to Ordering Activities.

(d) For Elite support service for critical issues, which requires fast arrival to the site, Contractor through Check Point will cover all locations which are accessible within 12 hour elapsed commercial travel time from G7 countries hubs (US (mainland), UK, Germany, Italy, France, Japan, and Canada). In some remote locations, entry certifications requirements might add additional time to the engineer arrival on site.

(e) It is necessary that Elite Ordering Activities commit the necessary resources around the clock (24x7) in working with Check Point TAC and/or the engineer towards Problem Resolution of Severity 1 Errors.

v. Support Lifecycle.

(a) Contractor through Check Point provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Check Point will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product's Major Release version. General availability date' is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.

(b) Contractor through Check Point usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Check Point will provide End of Support notification for discontinued Software to Ordering Activity through an announcement posted on the Check Point Software Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/support_periods.html.

(c) Contractor through Check Point provides a comprehensive support lifecycle for its Hardware. Check Point TAC is available for Technical Assistance for up to five (5) years after Check Point's new appliance availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Check Point Software installed on it.

(d) For Software or Operating System installed on Check Point Hardware:

a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Check Point's new appliance availability announcement.

b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Ordering Activity.

c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Check Point's new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Ordering Activity.

(e) Contractor through Check Point provides Hardware Replacement for up to five (5) years after Check Point's new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Check Point's discretion.

(f) Contractor through Check Point will provide the date of Check Point's new appliance availability announcement and End of Support notification for discontinued Hardware to Ordering Activity through an announcement posted on the Check Point Appliance Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/appliance_support.html.

(g) Contractor through Check Point reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites.

vi. Nonconformance. If Contractor through Check Point determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Check Point related problem, then under Check Point's Support plan, Check Point shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Check Point will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

vii. Exclusions.

Support does not include the following items or actions:

(a) Step-by-step installation of Software or Service Packs;

(b) Onsite services (unless Ordering Activity's level of Support, as purchased, includes this feature), Professional Services, or Educational Services;

(c) Modification of software code, security-policy configuration, audits, or security design.

Contractor through Check Point shall have no obligation to Support:

(a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Contractor through Check Point;

(b) Product problems caused by Ordering Activity negligence, misuse, misapplication, or use of the product other than as specified in the Check Point user manual, or any other causes beyond the control of Contractor through Check Point;

(c) Product installed on any computer hardware that is not supported by Contractor through Check Point;

(d) Product not purchased from the Contractor's then-current GSA Price List;

(e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;

(f) Products that are past their End-of-Support date.

Contractor through Check Point shall have no obligation to Support Ordering Activity if:

(a) Appropriate payment for Support has not been received by Contractor; or

(b) Ordering Activity's annual Support term has expired without renewal.

viii. Reporting Non-Check Point Errors to Ordering Activity. Upon working the Service Request under normal processes, and with appropriate management review, if at that point Contractor through Check Point believes that a problem reported by Ordering Activity may not be due to an error in the Check Point product, Check Point will notify Ordering Activity. At that time, Ordering Activity may: (a) instruct Check Point to proceed with problem determination at Ordering Activity's possible expense as set forth herein; or (b) instruct Check Point that Ordering Activity does not wish the problem to be pursued at Ordering Activity's possible expense.

If Ordering Activity requests that Contractor through Check Point proceed with problem determination at Ordering Activity's possible expense and Check Point determines that the error was not due to the error in the product, Ordering

Activity shall pay Contractor, at the Contractor's Check Point then-current GSA rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Ordering Activity shall not be liable for:

(a) problem determination or repair to the extent the problems are due to anomalies in the Check Point product;
or

b) work performed after Ordering Activity has notified Contractor through Check Point that it no longer wishes problem determination to be continued at Ordering Activity's possible expense (such notice shall be deemed given when actually received by Check Point).

If Ordering Activity instructs Contractor through Check Point that it does not wish the problem pursued at Ordering Activity's possible expense or such determination requires effort in excess of Ordering Activity instructions, Check Point may, at its sole discretion, investigate the anomaly with no liability thereof.

c. ORDERING ACTIVITY OBLIGATIONS:

- i. **Staffing.** All Ordering Activity personnel contacting Contractor through Check Point for Support must be fully trained on both the Major Release of the Check Point Software and/or Hardware and the current issue for which Ordering Activity requires assistance.
- ii. **Named Designated Contacts.** Ordering Activity agrees that contact with Contractor through Check Point will be through the specified number of Designated Contacts. Ordering Activity is responsible for specifying and updating valid Designated Contacts in the Check Point User Center with person-specific email addresses. Ordering Activity agrees that access to any Support deliverable, Software Subscription downloads and SecureKnowledge will be through these Designated Contacts, not any alias. The ability to add additional contacts may be purchased per the prevailing Support Plan program guidelines.
- iii. **Network Access.** To the extent possible, and as requested by Contractor through Check Point, Ordering Activity understands that it may be necessary to provide Check Point or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Check Point determines that its Technical Representative needs to access Ordering Activity's network in order to remotely diagnose an issue. Ordering Activity understands that if access is not provided as requested by Check Point, problem determination will be slower or impaired.
- iv. **Configuration Files.** Ordering Activity agrees to maintain a backup of the configuration that can be used to restore the Hardware.
- v. **System Information.** Ordering Activity must provide to Contractor through Check Point information for each System under a Support Plan by registering all products in the Ordering Activity's User Center Account with accurate details:
 - (a) Product License Key or Device Number;
 - (b) Physical Site location of the Hardware product; and
 - (c) Site contact person.

If Ordering Activity physically moves any Hardware from the original Site to another location, Ordering Activity must inform Contractor through Check Point of such change immediately with updated Site location and contact. It is Ordering Activity's responsibility to update such change in the Ordering Activity's User Center Account. Prior to Check Point's receipt of such notification from Ordering Activity, Check Point shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.

- vi. **Backup and Removal of Data.** To reconstruct lost or altered Ordering Activity files, data, or programs, Ordering Activity must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Contractor through Check Point, Ordering Activity agrees to:

- (a) backup and secure all programs and data contained in the Hardware;
- (b) securely erase all programs and data not provided by Contractor through Check Point with the Hardware product. Ordering Activity acknowledges that, to perform its responsibilities under this Replacement Service, Check Point may ship all or part of the Hardware product or its Software to third party locations around the world, and Ordering Activity authorizes Check Point to do so; and
- (c) remove all features, parts, options, alterations, and attachments not provided by Contractor through Check Point with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.

- vii. On-site Access. Where applicable, Ordering Activity agrees to provide Contractor through Check Point or its authorized partner with sufficient and safe access to Ordering Activity's facilities in order to permit Check Point to fulfill its obligations.
- viii. Shelf Spare Units. In the event that Ordering Activity has purchased Hardware Support with a Shelf Spare Replacement solution, Ordering Activity agrees that Contractor through Check Point shall, at all times, remain the sole owner of the Shelf Spare Unit(s) stored at the Ordering Activity's premises. Ordering Activity agrees that each Shelf Spare Unit stored at Ordering Activity's on-site location is to be used ONLY in case of Hardware failure approved by Check Point's TAC. Each Shelf Spare Unit's on-site location will be required to take an inventory of Hardware physically in stock on a quarterly basis and provide the results to the Check Point Logistics at logistics-reports@checkpoint.com. If it has been determined that the Shelf Spare Unit on-site location does not have the relevant Check Point inventory in stock and the missing inventory cannot be found or accounted for, or if the inventory is damaged as result of Ordering Activity's practices, the item shall be considered lost, and Check Point shall have the right to seek reimbursement from the Ordering Activity at the standard Check Point list price.

In the case that Contractor through Check Point will certify a local ACE Partner or subcontractor to provide the on-site Replacement Service, Check Point shall have the right to ask the Ordering Activity to send, at Check Point's expense, the Shelf Spare Unit from the Ordering Activity premises to the relevant partner at any time. In case this Support Plan is not renewed, Ordering Activity agrees to send the Shelf Spare Unit back to Check Point, or pay the full Check Point list price of a new unit.

d. HARDWARE REPLACEMENT:

- i. Hardware Return Procedure. If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide Advance Hardware Replacement service with a refurbished part /unit for the Hardware under the type of Hardware Support Plan Check Point designates for that Hardware. A defective Hardware product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference a Returned Material Authorization ("RMA") number issued by an authorized Check Point service representative. To request an RMA number, Ordering Activity must contact Check Point TAC and open a Service Request. Ordering Activity should always register the Hardware Product in Ordering Activity's Check Point User Center account. If Ordering Activity does not register the Hardware Product with Check Point, Ordering Activity may be required to present proof of purchase as evidence of entitlement to Hardware Support service. The Hardware Product's Device Number will be required for all RMA cases.
- ii. Hardware Replacement Procedure. For Order Activities who have purchased Support for their Hardware, Contractor through Check Point will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by Check Point TAC. Check Point TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Check Point will send the required hardware to the Site location, as it appears in Order Activity's User Center and as verified with Order Activity when opening the Support Service Request, in accordance with the Hardware Support Plan Check Point designates for that Hardware.

Order Activity must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Contractor through Check Point in the RMA letter shipped with the replacement, to a location that Check Point designates; return shipment of the faulty Hardware should be made within five (5) business days of the arrival of the replacement or approval of the RMA for Shelf Spare Unit usage.

e. TECHNICAL SUPPORT:

- i. Web-based Support. Check Point web-based Support available at URL: <https://support.checkpoint.com> provides the Ordering Activity access to:
 - (a) Documentation, containing product documentation, release notes, troubleshooting guides and technical white papers about Check Point Software and Hardware products, as releases become generally commercially available.
 - (b) SecureKnowledgeSM, a self-service knowledge base, restricted repository of thousands of technical documents as well as tools covering everything from planning installation and upgrades, to understanding error messages and fixing specific known issues. Technical solutions, how-to's, and troubleshooting documents written by Check Point engineers and technical staff are added daily. Ordering Activity may have Advanced or Expert Access in accordance with their Support level and the specifications of this Agreement. When a solution is identified to solve an issue, Check Point TAC may share this solution with Ordering Activity via email or verbal communication.
 - (c) Software Subscription Downloads, restricted download site for the sole use of the Supported Ordering Activity; includes latest product upgrades, Hot Fix Accumulators (HFAs), Feature Packs, security fixes, tools, and utilities for the contract term. Software Subscription guarantees that Check Point solutions are kept as current as possible through the latest product enhancements and capabilities.

For Major Product releases, Ordering Activity may request Contractor through Check Point to ship a Media Kit that includes Software upgrade package.

(d) Product Forums, containing shared knowledge of Check Point products and solutions within an online community of customers, partners and employees, as well as news on Check Point products and technologies. Support Ordering Activities can view and post on the discussion threads in all Forums.

ii. Contact TAC. Ordering Activity’s access to TAC should be either by telephone, by web request, or by live chat.

(a) By Telephone: Contact the nearest TAC (refer to URL: <http://www.checkpoint.com/services/contact/index.html>.) An Automatic Call Distribution System will prompt Ordering Activity to select appropriate Support Plan options. After Ordering Activity is directed to a TAC Technical Representative, Ordering Activity’s email address must be provided. Once TAC verified Ordering Activity is a Designated Contact and account has a valid Support contract, TAC will inquire information about the issue and create a Service Request in the Check Point database.

(b) By Web Request: Log into User Center, under the “Support” Tab, select the “Create Service Request” link. Complete the request form with all of the appropriate information about the issue and submit the request. A Service Request will be generated in the Check Point database.

PLEASE NOTE: DO NOT submit a Service Request for a Severity 1 issue via the Web request form. For a Severity 1 case, please contact Contractor through Check Point by telephone and select the appropriate options for your support.

(c) By Live Chat: Log into User Center, under the “Support” Tab, select “Live Chat” icon. Live Chat is for quick and simple questions about Check Point products and services. Any issue requires troubleshooting must be submitted by telephone or by web request.

(d) By Email: Contractor through Check Point does not allow opening a Service Request via email. All requests should be opened by Telephone or by web request. Correspondence on an open Service Request may be made via email, as long as the Ordering Activity Designated Contact writes a reply to emails received from Check Point TAC.

Availability and accessibility of TAC is in accordance with the specifications of this Agreement, subject to the situations set forth in Section 8.1 Force Majeure.

	Standard	Premium	Elite
TAC Availability	5x9 Business Day	7x24 Every Day	7x24 Every Day
Unlimited Service Requests	Yes	Yes	Yes

iii. Technical Support Procedures. Under Check Point’s Software support plan, Check Point TAC utilizes a multi-tier support model for Problem Resolution. When initial contact with TAC is made, a Technical Representative or Web Service Request Tool will validate Ordering Activity information, contract information, Device Number, and gather details relevant to the question or issue. A unique Service Request (SR) number will be assigned and delivered to the Ordering Activity Designated Contact, either verbally, via Web request, or via email. This SR number will be used to track any given issue from initial contact to final Problem Resolution. If appropriate, an issue will be reproduced in the Check Point Test Lab. Additional testing and problem duplication may take place in a network laboratory environment. Further investigation, including additional troubleshooting or debugging activity may be required. Based on the results of the Test Lab investigation, an issue may be resolved, or, if an anomaly is identified, elevated to the appropriate Check Point Team for final Problem Resolution.

Contractor through Check Point agrees to use commercially reasonable efforts to work with the Ordering Activity for Problem Resolution for an issue in accordance with the specifications of these terms. Timely efforts must be made by all parties involved. If communication from Ordering Activity ceases without notice, after five (5) business days, Check Point may, upon notice, close a Service Request due to inactivity on the part of the Ordering Activity. A Service Request may be reopened within thirty (30) consecutive days of closure. Once a Service Request is closed for thirty (30) consecutive days, this issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new Service Request will be opened, and all pertinent materials may need to be resubmitted before work can continue.

iv. Severity Level Response Time and Resource Commitment. Contractor through Check Point agrees to use commercially reasonable efforts to respond to Ordering Activity requests based on the Severity of the issue as follows:

Severity Level	Response Time (in accordance with Support Plan)			Commitment
	Standard	Premium	Elite	
Severity 1	30 minutes	30 minutes	30 minutes	Check Point and Ordering Activity will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.
Severity 2	4 Hours	2 Hours	30 Minutes	Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution to obtain workaround or

				reduce the severity of the Error and alternative resources during non Standard Business Hours.
Severity 3	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will commit full time resources during normal business hours for Problem Resolution, to obtain workaround or reduce the severity of the Error.
Severity 4	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will provide Resources during normal business hours for Problem Resolution.

Note: Contractor through Check Point does not guarantee the resolution of a problem within the times specified.

For Severity definitions for Network Security Product(s) or Endpoint Security Product(s), refer to the Section "DEFINITIONS," "Severity" Definitions for Network Security Product(s) and "Severity" Definitions for Endpoint Security product(s).

The response times set forth in this Section constitute targeted goals of the Technical Support to be provided by Contractor through Check Point to Ordering Activity, and it is understood that Check Point shall use commercially reasonable efforts to respond to Ordering Activity requests within the target times set for the relevant Severity level. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Check Point Support obligations under this Agreement.

v. Escalation Process and Procedure.

(a) Ordering Activity-initiated Escalation: Under Check Point's Support plan, some work items (especially those associated with critical situations) may need to be expedited. When this becomes the case, Ordering Activity shall notify Check Point TAC of the critical situation. If TAC determines that sufficient information has been provided by Ordering Activity and the escalation is accepted, Check Point will work with Ordering Activity on providing the appropriate solution. The escalation begins in accordance to Check Point standard business practices. Upon request, Check Point may provide an action plan to Ordering Activity that may include (but is not limited by): problem statement, next action items to resolve the issue and time estimates on these action items.

(b) Check Point Internal Escalation Process: When TAC determines an issue needs internal escalation, the issue receives a combination of increasing levels of engineering expertise and managerial attentions in accordance with Check Point standard business practice. Except for the case of a Ordering Activity-initiated Escalation in accordance with Section 5.5 (c) below, that issue need not be escalated to a higher managerial level until the Severity of the issue increases or progress toward resolution ceases or is unduly delayed.

(c) Management Escalation: If Ordering Activity feels that the issue is not moving forward in an appropriate timeframe to closure, and/or an issue requires managerial attention, for immediate escalation, Ordering Activity can either request Technical Representative to connect the Ordering Activity to a Team Leader or contact the Team Leader of the Technical Representative handling the case directly. Team Leader's contact details are located at the bottom of the Service Request email. Regardless of the total elapsed time of an outstanding Service Request, the point of escalation shall be initiated at the Technical Representative level, escalated to the Team Leader(s), followed by TAC Manager(s), the TAC Director(s), and then the TAC Vice President. For the most current list of Check Point TAC Escalation Management contacts, refer to Escalation Management link in Service Request Web tool in the User Center.

e. CHECK POINT DIRECT SUPPORT PLAN DESCRIPTIONS

i. Check Point Support Offerings. In order to meet the needs of its enterprise Ordering Activities, Contractor through Check Point offers its Enterprise Support program for the support of Check Point Software products. This provides a total support service solution directly to enterprise/business customers. Below, are the program levels available under Check Point's direct Enterprise Support program:

Direct Enterprise Support
<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	12%	20%	17%	23%	20%	26%
Mid Range	12%	22%	17%	25%	20%	28%
Low End	12%	27%	17%	30%	20%	33%
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).

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134

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

1. **Scope.** This Rider and the attached **Cisco Systems, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - 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

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 paid the required license fees to an Approved Source. "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 Cisco'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 the applicable Supplemental License Agreement or in the applicable purchase order which has been accepted by an Approved Source and for which Ordering Activity has paid to an Approved Source the required license fee (the "Purchase Order"). Unless otherwise expressly provided in the Documentation, Ordering Activity 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 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 Cisco retains ownership of all copies of the Software and Documentation. Ordering Activity 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 this Attachment A, Ordering Activity shall only use the Software in connection with the use of Cisco equipment purchased by the Ordering Activity from an Approved Source 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 Cisco relicensing/transfer policy then in force), or use the Software on Cisco equipment not purchased by the Ordering Activity from an Approved Source or on secondhand Cisco 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 Cisco 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 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. Ordering Activity shall implement reasonable security measures to protect such trade secrets. To the extent required by applicable law, and at Ordering Activity's written request, Cisco shall provide Ordering Activity 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. 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 Cisco 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 APPLICABLE FEE TO AN APPROVED SOURCE FOR THE

UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT SUPPLIED BY AN APPROVED SOURCE 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.

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, Ordering Activity shall not make any copies or duplicates of any Software without the prior written permission of Cisco.

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 this Attachment A may be incorporated, Ordering Activity may provide to Government end user or, if this Attachment A is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in this Attachment A. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

Limited Warranty

Subject to the limitations and conditions set forth herein, Contractor warrants that commencing from the date of shipment to Ordering Activity (but in case of resale by an Approved Source other than Cisco, 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 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 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 the Approved Source supplying the Software to Ordering Activity, within the warranty period. Contractor 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 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.

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; (f) any Software not posted on Cisco's Software Center; (g) any Software that Contractor expressly provides on an "AS IS" basis on Cisco'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.

LIMITED HARDWARE WARRANTY

Hardware. Contractor warrants that commencing from the date of shipment to Ordering Activity (and in case of resale by a 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 period set forth in the warranty card accompanying the Product (if any), the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. This limited warranty extends only to the original user of the Product. Ordering Activity's remedy and the liability of Contractor and its suppliers under this limited warranty will be, at Contractor's or its service center's

option, shipment of a replacement within the warranty period and according to the replacement process described in the warranty card (if any), or if no warranty card, as described on the Cisco Product Warranties web page www.cisco.com/go/warranty or a refund of the purchase price if the Hardware is returned to the party supplying it to Ordering Activity, freight and insurance prepaid. Cisco replacement parts used in Hardware replacement may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the return of affected Hardware in accordance with Cisco's or its service center's then-current Return Material Authorization (RMA) procedures.

Additional product information applicable to the Product may be located at the following URL: www.cisco.com/go/warranty

Restrictions. The above Hardware warranty and limited warranty in this Attachment A ("Software warranty") do not apply if the Software, Hardware Product or any other equipment upon which the Software is authorized by Cisco or its suppliers or licensors 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; (f) any Software not posted on Cisco's Software Center (on Cisco.com URL where Cisco makes the Software publicly available to licensed Ordering Activities); (g) any Software that Contractor expressly provides on an "AS IS" basis on Cisco's Software Center; or (h) any Software for which Contractor does not receive a license fee.

DISCLAIMER OF HARDWARE 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 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. THESE WARRANTIES GIVE 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.

Return Material Authorizations

If your unit fails and you are asked to return it under the terms of your warranty, follow these steps:

1. Return the unit to your network supplier.
2. If you cannot locate your network supplier, you may return the unit to Cisco.

All material returned to Cisco must be accompanied by a Return Material Authorization (RMA) number. This number is necessary so that the factory can ensure proper tracking and handling of returned material. If you do not have an RMA number, Cisco reserves the right to refuse receipt of returned units. To obtain an RMA number, call 800 553-NETS (6387). Your unit will be replaced according to the applicable warranty guidelines.

Cisco WebEx, LLC
3979 Freedom Cir.
Santa Clara, CA 95054

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

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

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

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

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

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

CISCO WEBEX

CISCO WEBEX LICENSE, WARRANTY AND SUPPORT TERMS

1. **WebEx Services.** These WebEx Terms and Conditions (“Attachment A”) govern the use by the Ordering Activity of any services (the “Services”) ordered by Ordering Activity from Contractor and set forth in one or more Order Forms. “Services” in this Attachment A does not refer to or include any professional services.
2. **Order Forms.** An “Order Form” is a form signed by Ordering Activity that identifies the type and quantity of Services being ordered and the associated fees. Ordering Activity may be required to provide information in order to register for and/or use certain Services. Ordering Activity warrants that all such information is accurate.
3. **Ordering Activity Site Set Up.** Initially, for certain Services identified in the Order Form, Contractor through WebEx will set up a website that does not include the Ordering Activity’s corporate logos, page headers or colors (the “General Site”). If selected on the Order Form, Contractor through WebEx will then set-up a site for use by Ordering Activity that will incorporate Ordering Activity’s corporate logos, page headers and colors (the “Subscriber Site”). The General Site will be available until Ordering Activity and Contractor through WebEx have completed their obligations, if any, to create the Subscriber Site. Ordering Activity will supply the links and branding information and materials necessary for Contractor through WebEx to create the Subscriber Site. Contractor through WebEx expects that the Subscriber Site will be available by the Anticipated Start Date set forth on the Order Form. Contractor through WebEx will make minor changes to the Subscriber Site, such as fixing and changing links, at no additional cost. Ordering Activity is responsible for all uses of the General and Subscriber Sites.
4. **Changes to Services / Beta Services.** Contractor through 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 Ordering Activity. Contractor through 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 Ordering Activity at an additional cost (“Cost Feature”). If Ordering Activity elects to add a Cost Feature, it may do so by contacting Contractor in order to receive a quote for the Cost Feature. Further, Contractor through 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. Ordering Activity agrees that Contractor through WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback that Ordering Activity provides to Contractor through WebEx without payment of compensation to Ordering Activity. Contractor through WebEx may, at its sole discretion, make available to Ordering Activity a “beta” version of any of the Services (the “Beta Services”) for purposes of evaluation and feedback. Ordering Activity acknowledges that the Beta Service(s) Ordering Activity is evaluating may contain bugs, errors and other problems and is provided to Ordering Activity “AS-IS.” Contractor disclaims any warranty or liability obligations to Ordering Activity of any kind with respect to the Beta Services. Ordering Activity further acknowledges the importance of communication between Contractor through WebEx and Ordering Activity during Ordering Activity’s use of the Beta Services and hereby agrees to receive related correspondence and updates from Contractor through WebEx. In the event Ordering Activity requests to opt-out from such communications, Ordering Activity’s participation in the Beta Services will also be canceled. Ordering Activity also hereby acknowledges that Contractor through 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 Contractor through WebEx has no express or implied obligation to Ordering Activity to announce or introduce the Beta Services. During the WebEx Beta program, Ordering Activity will be asked to provide feedback regarding Subscriber’s use of the Beta Service(s). Ordering Activity agrees that Contractor through 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 Ordering Activity provides to Contractor through WebEx without payment of compensation to Ordering Activity. Contractor through 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 Ordering Activity.
5. **WebEx Training and Support.** Online training and online support will be provided by Contractor through WebEx at no additional cost, and is specified in the service descriptions.
6. **Ordering Activity Responsibilities.**

- a. **Account Number/Password.** Except when Ordering Activity'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, Ordering Activity agrees that Ordering Activity is solely responsible for maintaining the confidentiality of Ordering Activity's username, account number and passwords and solely responsible for any unauthorized usage. Ordering Activity agrees to immediately notify Contractor through WebEx of any unauthorized use of Ordering Activity's account of which Ordering Activity becomes aware.
 - b. **Content.** Except when Ordering Activity'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, Ordering Activity 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 Service. Under no circumstances will Contractor be liable to Ordering Activity 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. Ordering Activity understands and agrees that by displaying, uploading, exchanging or transmitting Content while using the Services or otherwise providing Content to a WebEx website or space ("Site"), Ordering Activity automatically grants (and warrants and represents it has a right to grant) to Contractor through WebEx, solely for the purpose of offering the Sites and/or the Services to Ordering Activity, a world-wide, royalty-free, sublicensable (so WebEx affiliates, contractors, resellers and partners can deliver the Services), perpetual, irrevocable license to use, modify, publicly perform, publicly display, reproduce and distribute the Content. If at any time Ordering Activity objects to any material on a Site, Ordering Activity's remedy is to cease using it (to the extent not prohibited by applicable law). Contractor through WebEx does not endorse and has no control over what Ordering Activity's or other users of the Service ("Users") post or submit to a Site. Ordering Activity shall contact WebEx Customer Support at 866-229-3239 if Ordering Activity becomes aware of misuse of the Services by any person. Contractor through WebEx cannot guarantee the accuracy of any information submitted by any User or Content, nor any identity information about any User.
 - c. **Communications.** Ordering Activity agrees that Ordering Activity will not use the Services to send unsolicited email outside Ordering Activity'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"). Ordering Activity 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.
7. **Warranty Disclaimer.** ORDERING ACTIVITY 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, CONTRACTOR, 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. CONTRACTOR, 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 ORDERING ACTIVITY 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 Contractor, and its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.
8. **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. Ordering Activity 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. Ordering Activity may not use any meta tags or any other "hidden text" utilizing WebEx Marks without WebEx's express written consent.
 - b. **Use of the Services.** Ordering Activity may use the Services only as permitted under the terms and conditions of this Attachment A. Ordering Activity will not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly generate income from the Services. Ordering Activity 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, Ordering Activity may use the Services only for sessions or meetings in which Ordering Activity is an active participant.

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.

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 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 packaging 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 Federatio	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.

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

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Limited Warranty

With the exception of Software provided to You for beta, demonstration, test or evaluation purposes or that is labeled "Not for Resale", Contractor warrants that the Software licensed hereunder shall be new and shall operate substantially in accordance with its user documentation for a period of ninety (90) days from the date of shipment by CommVault or its licensors (hereinafter the "Warranty Period"). If, during the Warranty Period, You believe any Software product to be defective, You must immediately notify Contractor in writing and follow Contractor's instructions regarding the return of such Software. Contractor's liability to You, and Your remedy, shall be, at Contractor's option, (i) repair or replacement of the Software product which does not comply with this Limited Warranty, or (ii) return of the amount paid by You for the Software product which does not comply with the Limited Warranty. Contractor shall have the right to submit a claim for its increased costs under the terms of the Order and Contract in the event Contractor or CommVault determines that the Software product is in compliance with this Limited Warranty. The user documentation is the exclusive statement of performance of the Software licensed hereunder.

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The following paragraph is applicable only to CommVault 1-Touch products containing Microsoft Windows Pre-Installation Environment (WinPE) software: (i) The license for the CommVault 1-Touch product is limited to its use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program and not for use as a general purpose operating system or a fully functional version of any operating system product; (ii) the WinPE software is provided "as is"; (iii) the 1-Touch products, by virtue of the inclusion of WinPE, contain a security feature that will cause the computer system to reboot without prior notification to You after 24 hours of continuous use; (iv) neither Microsoft nor any Microsoft affiliate shall have any liability related to the 1-Touch or the WinPE products; and (v) all customer support issues will be handled solely by CommVault.

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Patent Acknowledgment

This Software is covered by US Patent Numbers 5,559,991; 5,642,496; 6,418,478; 6,542,972; 6,658,436; 6,721,767; 6,760,723; 7,003,641; 7,035,880; 7,107,298; 7,130,970; 7,155,481; 7,162,496; 7,174,433; 7,209,972; 7,246,207; 7,277,941; 7,287,047; 7,315,923; 7,315,924; 7,343,356; 7,343,453; 7,343,459; 7,346,623; 7,346,751; 7,380,072; 7,389,311; 7,395,282; 7,401,154; 7,409,509; 7,434,219; 7,440,982; 7,447,692; 7,454,569; 7,457,790; 7,472,142; 7,472,238; 7,484,054; 7,490,207; 7,500,053; 7,529,782; 7,536,291; 7,539,707; 7,539,783; 7,543,125; 7,546,324; 7,568,080; 7,581,077; 7,584,227; 7,596,586; 7,603,386; 7,603,518; 7,606,844; 7,613,748; 7,613,752; 7,617,253; 7,617,262; 7,620,710; 7,631,151; 7,631,351; 7,636,743; 7,644,245; 7,651,593; 7,657,550; 7,657,666; 7,660,800; 7,660,807; 7,661,028; 7,668,884; 7,707,178; 7,711,700; 7,734,593; 7,734,669; 7,739,381; 7,739,450; 7,739,459; 7,747,579, and other patents and patents pending. See www.commvault.com/patents for information about these and other patents covering this Software.

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Covata USA, Inc.
11921 Freedom Drive, Suite 550
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 **Covata 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**

COVATA

COVATA LICENSE, WARRANTY AND SUPPORT TERMS

1. GRANT OF LICENSE.

- 1.1 In consideration of the terms set out in this Attachment A, Contractor grants Ordering Activity (herein also referred to as "Licensee") a non-exclusive, non-transferable, revocable license to install and use the Software and use the Documentation during the License Term in accordance with (a) the terms of this Attachment A; (b) the Documentation; (c) the limitations of the License Type licensed by the Licensee; and (d) other applicable limitations set forth in the Order.
- 1.2 **Scope of Use.** Contractor through Covata licenses the Software by way of Server Licenses, User Licenses or a combination thereof for use on Licensee's servers and/or user level devices such as personal computers, tablets, and smartphones.
- (a) **Server Licenses.** Contractor through Covata licenses some Software components (i.e., Covata Server Stack, Secure Envelopes Exchange Agent, Secure Envelopes Postfix Agent, Secure Envelopes Outlook Plug-in) of the Covata solution (collectively, the "Server Software") on a per server basis. Licensee may use one copy of the Server Software on a single server (virtual or physical) owned, leased, or otherwise controlled by Licensee, and only the number of users set forth on a given Order may utilize such Server Software at a given time. If Licensee has multiple Licenses for the Server Software, Licensee may use as many copies of the Server Software as Licensee has Licenses. For purposes of this Attachment A, "use" of the software means loading the Server Software into the temporary or permanent memory of a computer. Installation of the Server Software on a network server solely for distribution to other computers is not "use" of the Server Software, and is permitted, as long as Licensee has a license for each server (virtual or physical) to which the Server Software is distributed. The Server Software may not be used on or distributed to a greater number of servers than Licensee has Licenses. A Server License provides the Licensee unlimited use of the Secure Envelopes Web Client used in conjunction with the Covata Secure Objects Server on the Licensee's server(s) (virtual or physical).
- (b) **User Licenses.** Contractor through Covata licenses Secure Objects Client software (i.e., Secure Envelopes for Windows, Secure Envelopes for Mac, Secure Envelopes for Android, Secure Envelopes for iPad and Secure Envelopes for iPhone) (collectively, the "End User Software") to specified end users based on a unique E-mail ID that provides the user identified by the unique E-mail ID access to one or more of the End User Software products listed. If Licensee has multiple Licenses for the End User Software, Licensee may use as many copies of the End User Software for as many unique E-mail IDs as Licensee has Licenses. For purposes of this Attachment A, "use" of the End User Software means loading the End User Software into the temporary or permanent memory of a computer or mobile device. Installation of the End User Software on a network server solely for distribution to specific end users is not "use" of the End User Software, and is permitted, as long as Licensee has a license for each unique E-mail ID to which the End User Software is distributed. The End User Software may not be used on or distributed to a greater number of end users than Licensee has Licenses and may only be distributed to end users with unique E-mail IDs listed on the applicable Order. For clarity, an Email ID may only be assigned to a single end user, and such License shall only give that individual a right to use the Software hereunder. Notwithstanding the foregoing, an end user may place the Software on multiple devices simultaneously, provided such end user is the only user of such Software under this User License on all such devices.
- 1.3 Under the License granted, Licensee may permit Third Party Agents to access, use and/or operate the Software on Licensee's behalf for the sole purpose of delivering services to Licensee, provided that Licensee will be responsible for the Third Party Agents' compliance with the terms and conditions of this Attachment A.
- 1.4 Licensee may make one copy of the Software in machine-readable form solely for backup purposes. Licensee must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software. Licensee may not sell or transfer any copy of the Software made for backup purposes.

- 1.5 The Software contains proprietary and confidential information of Covata and its licensors, including copyrights which are protected by international copyright laws, inventions which are protected by patents (or patents pending in Australia), trade secrets and trademarks contained in the Software. Title to and ownership of the Software, including without limitation all Intellectual Property Rights in and to the Software, are and shall remain the exclusive property of Covata and its licensors, and except for the limited license granted to Licensee by Covata, Covata reserves all right, title and interest in and to the Software. Licensee shall not take any action to jeopardize, limit or interfere with Covata and its licensors' ownership of and rights with respect to the Software. Licensee acknowledges that any unauthorized copying or unauthorized use of the Software is a violation of this Attachment A and is strictly prohibited. Any bug reports, usability reports, test results, feedback made by Licensee, or any other data transmitted to or from the Software shall be the sole property of Covata and its licensors and may be used by Covata and its licensors for any purpose.
- 1.6 Contractor through Covata may collect and use technical and related information from Licensee's computer system to facilitate any updates or product support or to improve the Software, and to check compliance with this Attachment A.

2. RESTRICTIONS.

- 2.1 All rights not expressly granted to Licensee under this Attachment A are reserved. Without limiting the foregoing, Licensee must not, directly or indirectly:
 - (a) Subject to any statutory rights Licensee may have, modify, adapt, reverse disassemble, decompile or reverse engineer the whole or any part of the Software or otherwise attempt or allow any other party to attempt to discover the source code of the Software or to obtain the algorithms by which the Software performs its functions;
 - (b) In connection with the Software, use, share, upload, create or deal in any way with material that contains "viruses", "trojan horses", "copybots", "worms", spyware, "time bombs", "cancelbots" or any other computer programs or codes that are intended to damage, interrupt, destroy, detrimentally interfere with or limit the functioning of the Software data and other information used in connection with the Software or any Maintenance;
 - (c) Sublicense, rent, lease, re-sell or lend any portion of the Software save as provided under this Attachment A unless Licensee obtains a separate license from Contractor for such purposes. For example, Licensee may not embed the Software into another application and then distribute such to third parties unless Licensee first acquires an appropriate license from Contractor;
 - (d) Use the Software in or in association with safety critical applications where the failure of the Software to perform can reasonably be expected to result in a significant physical injury, or in loss of property, or loss of life. Any such use is entirely at Licensee's own risk;
 - (e) Remove any proprietary notices from any copy of the Software;
 - (f) Make any false, misleading or deceptive statement or representation regarding Contractor, Covata and/or the Software;
 - (g) Use the Software for the benefit of any third party, or charge any person, or receive any compensation for the use of the Software or do any of the foregoing in any manner not permitted by the licenses granted herein;
 - (h) Use the Software to, or in any way that would, violate any applicable law, regulation or ordinance; and
 - (i) Use the Software for the purposes of competing with Covata, including without limitation competitive intelligence.

3. MAINTENANCE AND SUPPORT.

- 3.1 This Attachment A may entitle Licensee to receive Maintenance for the License Term if Licensee has purchased such service by way of an Order, or, if Licensee has purchased a license for Software licensed on a perpetual basis, for the Maintenance Term, in all events, provided that Licensee has paid the applicable Maintenance Fee and/or Support Fee.
- 3.2 Contractor through Covata reserves the right in its discretion to limit the number of end users who may contact Covata technical support.

4. DISCLAIMER OF WARRANTIES.

- 4.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, IS PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY CONTRACTOR OR CONTRACTOR'S LICENSORS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED

DATA RECEIVED THEREFROM, INCLUDING ANY WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, 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 LICENSORS FURTHER DO NOT REPRESENT OR WARRANT THAT THE SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, ERROR-FREE, WILL OPERATE WITHOUT LOSS OF THE UNDERLYING DATA, OR WILL BE UNHACKABLE OR UNENCRYPTABLE.

- 4.2 LICENSEE ACKNOWLEDGES THAT THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, REMAINS WITH LICENSEE TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 4.3 No oral or written information or advice given by Contractor, its dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of any warranty provided herein.
- 4.4 As some jurisdictions do not allow some of the exclusions set forth in this Section 4, some of these exclusions may not apply to Licensee. If applicable law requires any warranties with respect to the Software, then to the maximum extent permitted by law, all such warranties are limited in duration to ninety (90) days from the date of delivery.

5. GENERAL.

- 5.1 If Licensee is, or are entering into this Attachment A on behalf of, any agency or instrumentality of the United States Government, the Software is "commercial computer software" and "commercial computer software documentation," and pursuant to FAR 12.212 or DFARS 227.7202, such entities' and their successors', as applicable, use, reproduction, and disclosure of the Software are governed by the terms of this Attachment A.

6. DEFINITIONS.

- 6.1 **Documentation** means documentation that is provided to Licensee by Covata with the Software, as revised by Covata 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.
- 6.2 **E-mail ID** means those email addresses identified in an Order where each individual owner of such address is entitled to utilize the Software in accordance with each License purchased hereunder.
- 6.3 **Intellectual Property Rights** means any and all present and future intellectual and industrial property rights and includes, without limitation, any registered or unregistered forms of copyright (and rights allied to copyright and any reversions and extensions of copyright), designs, patents, trademarks, service marks, domain names, good will and any commercial information (including know how and confidential information), any application or right to apply for registration of any of these rights, any rights protected or recognized under any laws throughout the world related to the above or any similar laws, and anything copied or derived from such property or rights.
- 6.4 **License** means individually, the right of one (1) individual to utilize the Software under the terms of this Attachment A and collectively, the right of all individuals whom Licensee has purchased a right to utilize the Software under the terms of this Attachment A.
- 6.5 **License Fee** means the fee amount outlined on an Order for use of the Software under the terms of this Attachment A.
- 6.6 **License Term** means the duration of a License as specified in the Order.
- 6.7 **License Type** means the type of License applicable to the Software, either a Server License, User License or combination thereof, as described in the Order.
- 6.8 **Ordering Activity** (herein also referred to as "Licensee") means the purchaser of the license rights granted by this Attachment A and 'Licensee's' means belonging to Licensee or engaged by Licensee or otherwise pertaining to Licensee as the context so allows, whether on a temporary basis or otherwise.
- 6.9 **Maintenance** means collectively upgrades and/or updates where applicable to the Software as Covata deems appropriate, and standard technical support or enhanced technical support if Licensee has paid a Support Fee.
- 6.10 **Maintenance Fee** means the sums payable by Licensee in respect of a right to receive Maintenance for the Maintenance Term as set forth in an Order.
- 6.11 **Maintenance Term** means the period for which Licensee is eligible to receive Maintenance. For all Software other than Software licensed on a perpetual basis, the Maintenance Term is coterminous with the License Term. For Software licensed on a perpetual basis, the Maintenance Term means the period for which Licensee has paid the applicable Maintenance Fee as may be set out in the Order.

- 6.12 **Order** means a purchase order, enterprise license agreement, or other ordering document issued to Contractor by Licensee that references and incorporates the GSA Schedule Contract.
- 6.13 **Software** means Covata's software supplied to Licensee in connection with this agreement (for example the *Secure Object* suite of software incorporating all or any of the *Secure Store*, *Secure Envelopes* and *Secure Documents* software products) in whole or in part, including upgrades or modifications delivered to Licensee by Covata (and, if so agreed, any enhancements delivered to Licensee by Covata);
- 6.14 **Start Date** means such date as may be set out in the Order that the License Term commences hereunder.
- 6.15 **Support Fee** means the sums payable by Licensee in consideration of the provision by Covata of enhanced support services, if applicable as may be set out in the Order.
- 6.16 **Third Party Agent** means a third party delivering information technology services to Licensee pursuant to a written contract with Licensee.

EXHIBIT A – COVATA SOFTWARE DEVELOPMENT KIT (SDK) LICENSE TERMS

1. GRANT OF LICENSE.

- 1.1 In consideration of the terms set out in this Attachment A, Contractor grants Ordering Activity (herein also referred to as "Licensee") a non-exclusive, non-transferable, revocable license to use the SDK and Documentation during the License Term in accordance with (a) the terms of this Attachment A; (b) the Documentation; and (c) other applicable limitations set forth in the Order.
- 1.2 **Scope of Use.** Licensee may download and make a reasonable number of copies of the SDK contents and Documentation for the sole purpose of developing software that communicates with the Software. Licensee may download and install copies of the Covata Secure Objects Server software for the purposes of creating execution environments for developing and testing programs that use the Covata SDK. The maximum number of server instances that may be installed is three, unless otherwise specified in the Order.
- 1.3 Under the License granted, Licensee may permit Third Party Agents to access, use and/or operate the SDK on Licensee's behalf for the sole purpose of delivering services to Licensee, provided that Licensee will be responsible for the Third Party Agents' compliance with the terms and conditions of this Attachment A.
- 1.4 The SDK contains proprietary and confidential information of Covata and its licensors, including copyrights which are protected by international copyright laws, inventions which are protected by patents (or patents pending in Australia), trade secrets and trademarks contained in the SDK. Title to and ownership of the SDK, including without limitation all Intellectual Property Rights in and to the SDK, are and shall remain the exclusive property of Covata and its licensors, and except for the limited license granted to Licensee by Covata, Covata reserves all right, title and interest in and to the SDK. Licensee shall not take any action to jeopardize, limit or interfere with Covata and its licensors' ownership of and rights with respect to the SDK. Licensee acknowledges that any unauthorized copying or unauthorized use of the SDK is a violation of this Attachment A and is strictly prohibited. Any bug reports, usability reports, test results, or feedback made by Licensee shall be the sole property of Covata and its licensors and may be used by Covata and its licensors for any purpose.
- 1.5 Contractor through Covata may collect and use technical and related information from Licensee's computer system to facilitate any updates or product support or to improve the SDK or Software, and to check compliance with this Attachment A.

2. RESTRICTIONS.

- 2.1 All rights not expressly granted to Licensee under this Attachment A are reserved. Without limiting the foregoing, Licensee must not, directly or indirectly:
 - (a) Subject to any statutory rights Licensee may have, modify, adapt, reverse disassemble, decompile or reverse engineer the whole or any part of the SDK or otherwise attempt or allow any other party to attempt to discover the source code of the Software or to obtain the algorithms by which the Software performs its functions;
 - (b) Sublicense, rent, lease, re-sell or lend any portion of the SDK save as provided under this Attachment A unless Licensee obtains a separate license from Contractor for such purposes.
 - (c) Use the SDK to design or develop software to upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.
 - (d) Use the SDK in association with safety critical applications where the failure of the interfaces to the Software to perform can reasonably be expected to result in a significant physical injury, or in loss of property, or loss of life. Any such use is entirely at Licensee's own risk;

- (e) Remove any proprietary notices from any copy of the SDK material;
- (f) Place the SDK materials onto a server so that it would be accessible to a public network;
- (g) Imply that the programs developed with the SDK are certified or endorsed by Covata;
- (h) Make any false, misleading or deceptive statement or representation regarding Contractor, Covata and/or the SDK;
- (i) Use the SDK for the benefit of any third party, or charge any person, or receive any compensation for the use of the SDK or do any of the foregoing in any manner not permitted by the licenses granted herein;
- (j) Use the SDK to, or in any way that would, violate any applicable law, regulation or ordinance; and
- (k) Use the SDK for the purposes of competing with Covata, including without limitation competitive intelligence.
- (l) Use the Covata Secure Objects Server software provided as part of the SDK license for any other purpose than to develop and test programs developed with the SDK. Under no circumstances should any program developed by the licensee be deployed for internal use by the licensee or for a third party using the Server software provided.

3. MAINTENANCE AND SUPPORT.

- 3.1 Licensee will not receive any support from Contractor through Covata for the SDK or any other services from Covata in connection with the SDK. If the Licensee purchased support for Covata products, such support shall not apply to the SDK or use of the SDK. Support for the SDK can be purchased separately from Contractor.
- 3.2 Contractor through Covata is not obligated to provide maintenance or updates to the Licensee for any portion of the SDK.
- 3.3 Licensee will not receive any training for the SDK or any other form of education from Contractor through Covata in connection with the SDK. Training can be purchased separately from Contractor.

4. DISCLAIMER OF WARRANTIES.

- 4.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SDK, SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, IS PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY CONTRACTOR OR CONTRACTOR'S LICENSORS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SDK, SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, INCLUDING ANY WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, 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 LICENSORS FURTHER DO NOT REPRESENT OR WARRANT THAT THE SDK, SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, ERROR-FREE, WILL OPERATE WITHOUT LOSS OF THE UNDERLYING DATA, OR WILL BE UNHACKABLE OR UNENCRYPTABLE.
- 4.2 LICENSEE ACKNOWLEDGES THAT THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SDK, THE SOFTWARE, ANY DATA ENCRYPTED BY USE OF THE SOFTWARE, AND ANY ENCRYPTED OR DECRYPTED DATA RECEIVED THEREFROM, REMAINS WITH LICENSEE TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 4.3 No oral or written information or advice given by Contractor, its dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of any warranty provided herein.
- 4.4 As some jurisdictions do not allow some of the exclusions set forth in this [Section 4](#), some of these exclusions may not apply to Licensee. If applicable law requires any warranties with respect to the SDK, then to the maximum extent permitted by law, all such warranties are limited in duration to ninety (90) days from the date of delivery.

5. GENERAL.

- 5.1 If Licensee is, or are entering into this Attachment A on behalf of, any agency or instrumentality of the United States Government, the Software is "commercial computer software" and "commercial computer software documentation," and pursuant to FAR 12.212 or DFARS 227.7202, such entities' and their successors', as applicable, use, reproduction, and disclosure of the Software are governed by the terms of this Attachment A.

6. DEFINITIONS.

- 6.1 **Documentation** means documentation that is provided to Licensee by Covata with the SDK, as revised by Covata from time to time, and which may include programming guide, operation instructions, and sample code regarding the use of the SDK.

- 6.2 **Intellectual Property Rights** means any and all present and future intellectual and industrial property rights and includes, without limitation, any registered or unregistered forms of copyright (and rights allied to copyright and any reversions and extensions of copyright), designs, patents, trademarks, service marks, domain names, good will and any commercial information (including know how and confidential information), any application or right to apply for registration of any of these rights, any rights protected or recognized under any laws throughout the world related to the above or any similar laws, and anything copied or derived from such property or rights.
- 6.3 **License** means individually, the right of one (1) individual to utilize the SDK under the terms of this Attachment A and collectively, the right of all individuals whom Licensee has purchased a right to utilize the SDK under the terms of this Attachment A.
- 6.4 **License Fee** means the fee amount outlined on an Order for use of the SDK under the terms of this Attachment A.
- 6.5 **License Term** means the duration of a License as specified in the Order.
- 6.6 **Ordering Activity** (herein also referred to as "Licensee") means the purchaser of the license rights granted by this Attachment A and 'Licensee's' means belonging to Licensee or engaged by Licensee or otherwise pertaining to Licensee as the context so allows, whether on a temporary basis or otherwise.
- 6.7 **Order** means a purchase order, enterprise license agreement, or other ordering document issued to Contractor by Licensee that references and incorporates the GSA Schedule Contract.
- 6.8 **Sample Code** means sample software in source code format designated in the Documentation or directories as "sample code," "samples," or "sample application code."
- 6.9 **SDK** means a variety of materials, including but not limited to, interface definitions, documentation, and sample code regarding programming interfaces to *Covata Secure Objects* to Licensee in connection with this Attachment A, in whole or in part, including upgrades or modifications delivered to Licensee by Covata (and, if so agreed, any enhancements delivered to Licensee by Covata);
- 6.10 **Software** means Covata's software supplied to Licensee in connection with this agreement (for example the *Secure Object* suite of software incorporating all or any of the *Secure Store*, *Secure Envelopes* and *Secure Office* software products) in whole or in part, including upgrades or modifications delivered to Licensee by Covata (and, if so agreed, any enhancements delivered to Licensee by Covata);
- 6.11 **Start Date** means such date as may be set out in the Order that the License Term commences hereunder.
- 6.12 **Third Party Agent** means a third party delivering information technology services to Licensee pursuant to a written contract with Licensee.

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, LLC

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 authorized 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/alterd.

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.

DataCore Software Corporation
6300 NW 5th Way
Fort 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 **DataCore Software Corporation** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

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

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

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

DATACORE SOFTWARE CORPORATION

DATACORE SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

License Grant. Subject to the terms and conditions contained herein, Contractor hereby grants to Ordering Activity a non-transferable, non-exclusive license to download, install and use the binary code version of the Software, limited to the optional features (if any), number of computers (including virtual machines), storage capacity, number of users, disk drives, ports, and CPUs and other limitations specified by Contractor, as applicable. If Ordering Activity wants more than that for which it is licensed, it must purchase additional licenses, which will become effective for the duration of the term applicable to the original license. Contractor reserves all rights not expressly granted to Ordering Activity herein, and no other licenses, whether express, implied or otherwise, are granted to Ordering Activity.

Ordering Activity may install and use only the number of copies of the Software paid for by Ordering Activity. Ordering Activity's employees and cloud service customers may access the Software remotely through a wide area network or VPN, or other secure remote access method, provided that, if applicable, Ordering Activity may in no event exceed the number of permitted concurrent users or users of the Software for which Ordering Activity has paid the applicable license fee. Ordering Activity may make an additional back-up copy of the Software, provided the copy must contain all of the original Software's copyright, trademark and other proprietary notices.

License Restrictions. Ordering Activity will not cause or permit: (i) use or copying of the Software, except as expressly provided in this Attachment A; (ii) modification, rental, sub-license, lease, lending or transfer of the Software; (iii) reverse engineering, disassembly, or decompilation of the Software, except to the extent expressly permitted by law notwithstanding this prohibition; (iv) creation of any derivative works based on the Software; (v) use of the Software to provide a service on the computer equipment of a third party.

Ownership. All copies of Software are licensed, not sold. Contractor and its suppliers retain all right, title and interest in the Software, and in all copies, improvements, enhancements, modifications and derivative works thereof, including, without limitation, all patent, copyright, trade secret, trademark and database rights.

Maintenance, Support and Updates. Contractor is under no obligation to maintain, support or update the Software in any way, or to provide updates or error corrections. Such services may be separately purchased. If Contractor provides Ordering Activity with a bug fix, maintenance release or update to the Software, it is provided to Ordering Activity as and shall be considered Software subject to the terms of this Attachment A, unless Ordering Activity receives a separate license for that release or update that supersedes this Attachment A. In addition, the Software may contain a support function that, if exercised by Ordering Activity, will provide Contractor and its suppliers with certain system and registry information that may be used to provide support to Ordering Activity, as well as to update or enhance the Software. By exercising this function, Ordering Activity consents, on behalf of itself and its cloud service customers, to Contractor's access and use of such information for such purposes.

Limited Warranty. Contractor warrants for a period of ninety (90) days from delivery (including any period of evaluation) that the Software will substantially conform under normal use to the specifications contained in the user guides and operating manuals provided by Contractor with the Software. Contractor will, at its sole discretion, either promptly replace any Software or defective media that fail to comply with this warranty at its cost or refund the amount paid for the Software. Any claims submitted under this section must be submitted in writing to Contractor within the specified warranty period. This limited warranty is void if failure of the Software results from accident, abuse, misapplication, abnormal use or a virus. Any replacement for the Software, and any bug fix, maintenance release or update to the Software, will be warranted under this limited warranty for the remainder of the original warranty period applicable to the Software or thirty (30) days from its delivery, whichever is longer. THIS SECTION STATES ORDERING ACTIVITY'S REMEDY, AND CONTRACTOR'S LIABILITY, IN CONNECTION WITH THE SOFTWARE, INCLUDING FOR ANY BREACH OF THE WARRANTY RELATING TO THE SOFTWARE.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST HIDDEN DEFECTS TO THE FULLEST EXTENT PERMITTED BY LAW. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CONTRACTOR OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS ATTACHMENT A. CONTRACTOR DOES NOT WARRANT

THAT THE SOFTWARE WILL MEET ORDERING ACTIVITY'S OR ITS CLOUD SERVICE CUSTOMERS' REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF VARIATIONS FROM THE DOCUMENTATION. To the extent that an implied warranty or condition is created and cannot be disclaimed as provided above pursuant to applicable law, such implied warranty or condition is limited to the greater of ninety (90) days from delivery or the minimum period required by law.

Term and Termination. Ordering Activity's license (including any additional licenses it subsequently purchases) is limited to the original term purchased by Ordering Activity, and will expire automatically at the end of such term unless renewed by purchase of one or more additional terms. Upon expiration or termination of this license Ordering Activity will remove all copies of the Software and any part of the Software from any and all computer devices and destroy the Software. At Contractor's request, Ordering Activity will certify in writing to Contractor that all complete and partial copies of the Software have been destroyed and that no copies remain in its possession or under Ordering Activity's control. HOWEVER, FOLLOWING EXPIRATION OR TERMINATION, ORDERING ACTIVITY WILL NO LONGER BE PERMITTED TO ACCESS THE SOFTWARE, AND ALL DATA STORED BY OR FOR ORDERING ACTIVITY OR ITS CUSTOMERS USING THE SOFTWARE WILL BECOME INACCESSIBLE. ORDERING ACTIVITY IS SOLELY RESPONSIBLE FOR RETRIEVING AND PRESERVING ANY DATA PRIOR TO SUCH EXPIRATION OR TERMINATION.

DataCore Software Support

1. DEFINITIONS

- 1.1. "Software" means: (i) the DataCore software product licensed to Customer by Contractor for which Customer has purchased a Support Plan; (ii) the manuals and other end user documentation generally provided with the software; and (iii) all modifications, corrections, or updates provided in the course of providing the Support Services.
- 1.2. "Support Services" are the services provided to Customer pursuant to Contractor's then-current standard support plans ("Support Plans"), as described in "Support Policies," below.

2. SUPPORT SERVICES TERM

For all Support Plans except "Per-Incident" Support Plans, the "Support Services Term" shall be an initial term of one year commencing on the date that Customer purchases a Support Plan, although under certain circumstances it may be necessary (as determined by Contractor) that the initial term or a renewal term be longer or shorter than one year. Customer may, subject to the Support Policies, purchase one or more one year renewals of the Support Services Term, but the Support Services Plan purchased shall be considered to be for a fixed term regardless of how many renewals occur. Upon the expiration of the Support Services Term, Customer shall no longer be entitled to receive Support Services, even though Contractor may in its sole discretion provide some support following such expiration (all of which post-term support, if provided, shall be deemed accepted by Customer subject to the terms and conditions of this Attachment A). If Customer discontinues receiving Support Services (including but not limited to any temporary lapses cured by late renewal), Customer may subsequently resume Support Services if Customer purchases Support Plans for the then current term and for all prior periods following the date such services were discontinued. Please note that any failure to maintain the Support Plan for the Software in effect continuously from the date the Software is purchased (including but not limited to any temporary lapses cured by late renewal) will render the Software ineligible for the DataCore Carry Forward Value Protection Program.

For "Per-Incident" Support Plans, the "Support Services Term" shall begin when Customer purchases that Support Plan and shall end when Contractor, in its sole discretion, determines that the incident accepted pursuant to that Support Plan purchase is "closed."

3. SUPPORT SERVICES

- 3.1 During the Support Services Term, Contractor will provide the Support Services to Customer provided Customer: (i) holds a valid license; (ii) complies with Customer's obligations under this Attachment A, including the Customer requirements specified in the policies applicable to the Support Plan purchased (See [Support Policies, below](#)); and (iii) has registered Customer's Software for support at www.datacore.com/services_support/servsup_policies.asp.

4. OWNERSHIP

Contractor and its suppliers retain all right, title and interest in the Software and works created in connection with the Support Services, and in all copies, improvements, enhancements, modifications and derivative works thereof, including, without limitation, all patent, copyright, trade secret, trademark and database rights. Each modification, enhancement or update to Software that is provided in connection with Support Services shall be governed by Attachment A, unless Contractor provides Customer with a separate written license agreement for it.

5. WARRANTIES

- 5.1. Contractor warrants that it will perform the Support Services in a professional manner, in accordance with generally accepted industry standards. If any Support Services do not comply with the warranty in this Section, Contractor will, at its discretion, either perform the Support Services again or refund the relevant support fees (or, if applicable, pro-rata portion thereof) paid for such Support Services. THIS SECTION STATES CUSTOMER'S REMEDY, AND CONTRACTOR'S LIABILITY, IN CONNECTION WITH THE SUPPORT SERVICES, INCLUDING FOR ANY BREACH OF WARRANTY IN THIS SECTION.

5.2. THE WARRANTY SET FORTH IN SECTION 5.1 AND THE SOFTWARE WARRANTY SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST HIDDEN DEFECTS TO THE FULLEST EXTENT PERMITTED BY LAW. CONTRACTOR DOES NOT WARRANT THAT THE SUPPORT SERVICES OR SOFTWARE PROVIDED THEREUNDER WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE OF VARIATIONS FROM THE DOCUMENTATION.

6. GENERAL

6.1. Customer may not assign, delegate or transfer its Datacore Software or Support Services, or any rights or obligations under this Attachment A, without the prior written consent of Contractor. Customer agrees to notify Contractor of any intended assignment or transfer, and to provide Contractor evidence of the proposed assignee's agreement to comply with the terms of this Attachment A. Any attempt by Customer to assign, delegate or transfer in breach of this Section shall be void.

DATACORE SUPPORT POLICIES

Overview

Support Plan	Premium Support
Product	SANsymphony-V / SANmelody / SANsymphony / Traveller / SANmaestro
Support Hours	24 hours 7 days per week 365 days
Online resources	Yes
Email and Web Support	Yes
Phone Support	Yes
Chat Support	Yes
Updates and Upgrades	Yes
Response Goals:	Based on Severity (see below)
Severity 1	1 hour from incident submission
Severity 2	4 hours from incident submission
Severity 3	3 business days after incident submission

In order to receive support, Ordering Activity must first register its products for support through the DataCore website. Registration of trial software is not needed and will not be accepted. Registration should be performed by Ordering Activity's **designated contacts** who are the people who will contact and work with the support team when product support is required.

Contractor supports the current full release and one release prior to the current full release with latest PSP of all DataCore products. For example, SANsymphony-V r8 and SANsymphony v7 + latest PSP and SANmelody v3 + latest PSP , MPIO 3.x and MPIO 2.4 are supported. However, in addressing an incident, Contractor may require that Ordering Activity upgrade to the current version. (Product upgrades and updates are included in premium support.) On-site support is not provided as part of the support programs. Contractor uses a secure, customer-initiated, remote support tool for providing effective troubleshooting should it be required.

To assure maximum benefit from the use of DataCore products, Contractor highly recommends that the Administrator participate in a DataCore Training Course. Planning for and execution of an installation, upgrade or migration should be performed using a DataCore Certified Installation Engineer (DCIE). Any issues occurring where an upgrade or an installation was performed without a DCIE (except for VL1 where the process defined has been followed) may result in support being withdrawn until re-installed by a DCIE.

Premium Support

Contractor offers a premium annual support subscription for those who need around the clock support for DataCore software that includes product updates and upgrades.

The support program includes the following:

- One year, Web, email, chat and phone access to support.
- Coverage hours are 24 hours a day, 7 days a week, 365 days per year.
- Response goals based on customer indicated severity levels.
- Product updates and upgrades.

Annual support must be purchased for each DataCore Software product (base product and options) within an enterprise if annual support is to be purchased for any of them.

Contacting Support

Ways to Contact Support

Web Support

The [Web Service](#) is the preferred method of requesting assistance for DataCore products. The Support web site offers access to the Knowledge Base, which contains hundreds of documented technical issues for all of the products, is regularly updated by the support staff, and provides proactive notification of updates to specific issues. The Knowledge Base is accessible free of charge to all customers, with more technical solutions made available to registered users who are logged in. For personal assistance, log-in to this site using the customer login and password. Enter descriptive information about the issues and set the severity level for the incident, as applicable.

Email Support

Email service is available by using alias support@datacore.com. All emails for new issues will generate incidents for registered customers. All email requests from registered customers are treated as Severity 3.

Chat Support

Chat support is available for registered users with an active premium support contract for Severity Level 1 issues. Chat is available from midnight GMT Sunday to midnight GMT Friday. Chat is available in English only.

Phone Support

The DataCore support number is available 24 hours a day, 365 days a year to premium support customers. Calls to any support phone numbers will be routed to the active, worldwide call center and responded to according to the level of support purchased by the customer. It is recommended that a Severity 1 phone call be followed up by logging a web incident. (Severity levels are defined below)

What to Have Ready When Contacting Technical Support

Effective support depends directly on the quality of data provided by the person entering the incident. When contacting Technical Support, please have the following information available:

- Severity Level
- Ordering Activity name (and end-user name, if not the end user)
- Contact name, telephone number (incl country code), email address
- Product or product feature
- Release version and PSP level
- The product's license key number
- Procedure used for producing the problem
- The last change implemented when problem occurred
- For each FC / Ethernet / SCSI HBA Controller in DataCore Server
 - Make and Model Number
 - Firmware Revision
 - Driver Release Level
- DataCore Server Hardware Description
- Network Diagram (for Configuration, Performance or High Availability issues)
- Description of High Availability Implementation (for High Availability issues)

Accurately describe the issue and be prepared to provide appropriate log files or screen captures. The individual contacting Support should have access to the Software.

Remember that files can always be attached to the personal assistance request. Screen shots and event logs are valuable resources when attempting to understand or resolve an issue.

Response Goals

The expediency and quality of the results are directly related to the completeness of the information provided. Please see the section on *Contacting Support* for guidance on the information to provide.

Premium Support

A technical service representative will respond through the same means chosen to report the incident. The response goals are based upon the severity level.

Severity Type	Definition	Interpretation	Response Goal
Severity 1	An error exists that makes the performance or continued performance of	The Production system is down, mission critical data cannot be accessed or a data loss	1 hour from incident submission

	any one or more mission critical program functions in a production environment impossible.	(corruption) occurred because of a result of an error of one or more components of DataCore software.	
Severity 2	In a production environment a condition exists that makes the performance or continued performance of any one or more significant program functions difficult, and which the customer cannot circumvent or avoid on a temporary basis.	The product does not perform a necessary function as documented or designed in a production environment. The system is operational. There is a perceived malfunction of the software that the user cannot workaround.?	4 hours from incident submission
Severity 3	A documentation error, or a limited problem or condition that is not critical exists, the customer wants to ask a question, or the above Severity definitions occur in a non-production environment.	The system is operational. There is a perceived malfunction of the software that the customer can work around but requires a correction to either the software documentation or code. Severity 3 is a catch-all for any other request for assistance.	3 business days after incident submission

EMC Corporation
176 South Street
Hopkinton, MA 01748

**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

EMC CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

For this Attachment A the following terms shall have the meanings given below:

A. "Documentation" means the then-current, generally available, written user manuals and online help and guides for Products provided by CONTRACTOR.

B. "Products" mean **"Equipment"** (which is the hardware delivered by CONTRACTOR to Ordering Activity) and/or **"Software"** (which is any programming code provided by CONTRACTOR to Ordering Activity as a standard product, also including microcode, firmware and operating system software).

C. "Product Notice" means the notice by which CONTRACTOR through EMC informs Ordering Activity of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in a CONTRACTOR quote, otherwise in writing, or by updating the relevant Exhibits to this Attachment A.

D. "Software Release" means any subsequent version of Software provided by CONTRACTOR after initial Delivery of Software, but does not mean a new Product.

2. LICENSE TERMS.

A. General License Grant. CONTRACTOR grants to Ordering Activity a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Ordering Activity's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Ordering Activity's use of the Software. Licenses granted to Ordering Activity shall, unless otherwise indicated on the CONTRACTOR quote, be perpetual and commence on Delivery of the physical media or the date Ordering Activity 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 CONTRACTOR 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. Ordering Activity 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. Ordering Activity may copy Documentation insofar as reasonably necessary in connection with Ordering Activity's authorized internal use of the Software. Ordering Activity shall not, without CONTRACTOR'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 CONTRACTOR Products performed by or on behalf of Ordering Activity; (iii) make available Software in any form to anyone other than Ordering Activity'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. Reserved Rights. All rights not expressly granted to Ordering Activity are reserved. In particular, no title to, or ownership of, the Software is transferred to Ordering Activity. Ordering Activity shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Ordering Activity 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 Ordering Activity permit any third party to do the same.

F. Other License Terms. If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which

CONTRACTOR is not the licensor; and (ii) not prevail with regard to Products for which CONTRACTOR is the licensor.

G. Regular Back-ups. As part of its obligation to mitigate damages, Ordering Activity shall take reasonable data back-up measures. In particular, Ordering Activity shall provide for a daily back-up process and back-up the relevant data before CONTRACTOR through EMC performs any remedial, upgrade or other works on Ordering Activity's production systems. To the extent CONTRACTOR's liability for loss of data is not anyway excluded under this GSA Schedule Contract, CONTRACTOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Ordering Activity had appropriately backed up its data.

3. PRODUCT WARRANTY.

A. Software Warranty. CONTRACTOR 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. CONTRACTOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Ordering Activity's requirements, except if expressly warranted by CONTRACTOR 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 CONTRACTOR 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 Ordering Activity 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. Remedies. CONTRACTOR's liability and Ordering Activity's remedies under the warranties described in this section shall be for CONTRACTOR, at its option, to remedy the non-compliance or to replace the affected Product. If CONTRACTOR is unable to effect such within a reasonable time, then CONTRACTOR shall refund the amount paid by Ordering Activity for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to CONTRACTOR. All replaced Products or portions thereof shall be returned to and become the property of CONTRACTOR. If such replacement is not so returned, Ordering Activity shall pay CONTRACTOR's then current spare parts price therefore. CONTRACTOR 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 Ordering Activity or any third party; (ii) any third party items or services with which the Product is used or other causes beyond CONTRACTOR's control; (iii) installation, operation or use not in accordance with CONTRACTOR'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 CONTRACTOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. CONTRACTOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without CONTRACTOR'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 CONTRACTOR. Such removal or disablement, or improper use or failure to use applicable Ordering Activity Support Tools shall be subject to a surcharge in accordance with CONTRACTOR's then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this Attachment A, CONTRACTOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

Exhibit 1
EMC Software Use Rights

The information in this Exhibit 1 to Attachment A is provided to further define the license rights and limitations for EMC Software products.

Software is licensed via a unit of measure that quantifies the scope of the license rights being granted on the basis of the particular licensing model used by Contractor for EMC Software. These licensing models are described in this document. The unit of measure applicable to the Software being offered pursuant to a Contractor Quote may be designated in the Software product description in the Quote by the codes described herein.

SOFTWARE MODELS

REGISTERED CAPACITY MODEL

Model Description

Licensing and pricing is based upon the Registered Capacity of one or more storage array, Server, or other device(s) on which the Software is licensed for use. The Registered Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The total capacity of the device may exceed the Registered Capacity that the Software is licensed to operate on.

Software that is licensed on the basis of Registered Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. Each storage array or other hardware device requires the purchase of (i) an initial base product (independent of Registered Capacity) and (ii) an additional quantity of add-on products that reflect the amount of Registered Capacity on which the applicable Software is authorized for use. Customers may subsequently determine they need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, customers must either purchase an appropriate number of additional licenses to cover the increase in the Registered Capacity, or purchase a new base product plus Software in instances where a capacity limitation has been reached.

Unit of Measure	Code(s)
Registered Capacity of the storage array or other hardware device in one terabyte (TB) increments	REG-TB

Model Specific Terms and Conditions

The purchase of a base product license plus add-on product licenses (which are measured by Registered Capacity) are both needed to use the Software product(s).

RAW CAPACITY MODEL

Model Description

Licensing and pricing is based upon the total capacity of the storage array or other devices on which the Software is licensed for use. Software licensed on the basis of Raw Capacity is typically licensed for use only on a specifically identified storage array. This model uses a “base plus capacity” approach as described in the Registered Capacity model above, where the customer purchases one base product license and then purchases incremental capacity add-on product licenses to equal the raw capacity of the system on which the Software will operate.

Unit of Measure	Code(s)
Raw Capacity of the storage array or other hardware device in one terabyte (TB) increments	RAW-TB

Model Specific Terms and Conditions

A base product license plus add-on product licenses (which are measured by Raw Capacity) are both needed to use the Software product(s).

INSTANCE MODEL

Model Description

Licensing and pricing is based upon a host machine and is characterized by the nature of the host platform. It includes servers that run a single instance, partition, or virtual machine as well as servers that run multiple instances, partitions, or virtual machines (both physical and virtual machines). (Each partition running the application constitutes an instance.) This model is intended to be used with server-based Software and Software that is licensed to a specific storage array.

	Code(s)
The number of physical or virtual machines or hosts that the Software runs on (“Instances”).	IN-SVR (server) IN-VM (virtual machine) IN-ARY (storage array) IN-NOD (node)

Model Specific Terms and Conditions

Server-based Software licensed in accordance with the Instance model is generally priced for a particular OS type, such as Windows, Solaris, etc.

An Instance license may provide support for only a single application type, such as Exchange or Oracle.

MANAGED ENTITY LICENSING MODEL

Model Description

Licensing and pricing is based upon the total number of entities being managed or inspected by the Software. An entity is defined as any singular item being managed or monitored by the EMC Software and can include third-party hardware, a running instance of a software program, an abstract resource (such as an email inbox), or a user. The Software licensed under this model may be used on or with a specific entity or quantity of entities of a specified type.

Examples of physical devices include, but are not limited to: routers, switches, firewalls, load balancers, storage arrays, NAS data movers, NAS systems, blades, and IP phones.

Examples of instances of a software program include, but are not limited to: databases, volume managers, file systems, operating systems, hypervisors, backup software systems, and CMDB systems. An example of an abstract resource is an email inbox being inspected or managed by the Software product. An example of a user as a managed entity is a user that authenticates to a VPN or some other system using the Software product.

Unit of Measure	Code(s)
The total number of entities being managed or inspected by the Software.	ME-DVC (device) ME-SW (software) ME-INBX (inbox) or MAILBX ME-USR (user)

Model Specific Terms and Conditions

Managed Entity Metric Considerations: Under this licensing model, some Software will be licensed by the total number of entities the Software is interacting with while other Software will be licensed for specifically identified entities.

PROCESS RATE LICENSING MODEL

Model Description

Licensing and pricing is based upon the cumulative amount of work done by the Software over a specified time period.

Unit of Measure	Code(s)
The amount of work processed by the Software over a specified period of time.	PR-PG-YR (pages per year) or PPY

Model Specific Terms and Conditions

Tiered pricing (price per mailbox decreases as the number of email mailboxes purchased increases).

Licensing for EMC EmailXtender is limited to the sole and exclusive benefit and use of the user. License rights may not be further assigned or sublicensed to any other party for any other purpose.

CONSUMPTION RATE LICENSING MODEL

Model Description

Licensing and pricing is based upon the cumulative number of units consumed over a specified time period.

Unit of Measure	Code(s)
The number of units to be consumed over a specified period of time.	CR

NAMED USER LICENSING MODEL

Model Description

Licensing and pricing is based upon the total number of unique named users or seats accessing the Software, whether such users are actively using the Software, or accessing the Software at any given time. If a named user of the Software leaves the employ of the customer, or moves into a role that doesn't require access to the Software, the seat does not have to be relinquished by the customer, but can be reassigned to a different named user.

Unit of Measure	Code(s)
The number of named users or seats accessing the Software.	NU-UID (user ID) or USR NU-SEAT (seat) or ST

CONCURRENT USER LICENSING MODEL

Model Description

This model specifies the maximum number of concurrent users who are accessing the Software at any instance in time.

Unit of Measure	Code(s)
The number of concurrent users accessing the Software at any instance in time.	CU-UCNT

CPU MODEL

Model Description

Licensing and pricing is based upon the total number of CPUs present in the computer upon which the Software will operate. A two-tier system is used based on the number of Cores present. These two tiers can be combined as needed on CPUs with greater than 12 Cores. Neither tier can be split across more than one CPU.

Unit of Measure	Code(s)
The number of compute cores ("Core") present in the computer/CPU upon which the Software operates.	CPU-1-6 (1 to 6 Cores) CPU-7-12 (7 to 12 Cores)

ADDITIONAL INFORMATION

Software Access and Use Requirements

Except as otherwise agreed in writing, licenses are required for each device/user accessing or using the Software, notwithstanding any non-EMC technology used to: (i) reduce the number of devices or users the Software directly manages; (ii) pool connections; or (iii) reduce the number of devices/users accessing or using the Software.

Pure Custom Client

Per-Seat licenses of Pure Custom Client are required for each user of each software application accessing a Content Server repository and deploying full read/write access to the Content Server, including applications providing end-user access via application servers, commerce servers, Web servers, or personalization servers.

Read-Only Client

Per-Seat licenses of Read-Only Client are required for each user of each software application accessing a Content Server repository and deploying read-only access to the Content Server, including applications providing access via application servers, commerce servers, Web servers or personalization servers on your behalf. Use of the Read-Only Client is limited to accessing the following Content Server functionality only: individual login, individualized security, query/search capability, viewing of content and properties, and personalized delivery of content based on user or information and/or security. Access to the following functionality is excluded from the Read-Only Client license: import or creation of new content, editing of existing content or properties (check in/checkout), creation of and participation in workflows, promotion or demotion of content in a lifecycle, creation of lifecycles, or any other operation that changes the content of a Content Server repository.

Captiva InputAccel (IA) and Documentum Reporting Services (DRS)

Each licensed installation of IA and DRS includes a single copy of SAP's Business Objects Crystal Reports Designer, which you may use solely in connection with your licensed use of IA or DRS, and only with data created or used by IA or DRS. You may not install more than one copy of Crystal Reports Designer per licensed installation of IA or DRS.

TEMPORARY TERM EXPIRING LICENSES

Evaluation and Other Non-production Use Licenses

In certain instances and at EMC's discretion, EMC may grant a short-term license for the purpose of demonstration, evaluation, or some other non-production internal use. Such license may be issued as a 30-day license for standalone Software or a 90-day license for array-based systems Software. At the end of the temporary term, the license to use the Software expires and the Software may cease to operate. The temporary term begins once the licenses are made available (e.g., either by making the Software available for download or by delivering the CD to the customer).

Failover Expiring Licenses

Each license entitlement includes the right to run the Software on a separate computer in a failover environment for up to 30 separate days in any given calendar year for purposes of emergency management. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software. License keys for such licenses must be obtained from EMC by making a request through EMC Powerlink .

Backup Testing Expiring License

For the purpose of testing physical copies of backups, license rights include the capability to run the Software on an unlicensed computer for up to 30 days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Emergency Expiring License

EMC will allow and support the use of emergency licenses for customer critical situations, such as getting back into production in a disaster recovery situation or resolving a situation with an incorrect License Key being delivered. Each license entitlement includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the software.

Service License

EMC will allow the use of service-related licenses for customer situations in conjunction with EMC's support organization when initiated and used by EMC support personnel. The license includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year.

MOVE POLICY

A "move" of a Software license is defined as when the original licensee stops using a Software product on one system or device and begins using it on another of the licensee's own systems or devices.

TRANSFER POLICY

"Transfer" of a Software license is defined as when the original licensee has stopped using a Software product and wants

to sell or otherwise transfer the rights to use the Software to a secondary purchaser. EMC does not allow transfers under any circumstances; in all cases, the secondary purchaser must purchase a new license to run the Software.

	Moveable	Comments
Operating Environment	No	This Software is licensed solely for use on the hardware device on which it is shipped; therefore, the license is not eligible to be moved to another device.
Platform	Yes	Permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original EMC hardware system; the features, functionality, and price of the Software are the same on the new and old EMC hardware systems; the source EMC hardware system is technologically compatible with the target EMC hardware system; the move is not prohibited by the product support agreement; any applicable move fees are paid to EMC. Given the above constraints, the following additional rules apply: <input type="checkbox"/> Moves from multiple systems to one system (consolidation) are allowed. <input type="checkbox"/> Moves from one system to two or more systems are not allowed, as a software license is indivisible. <input type="checkbox"/> Moving a raw capacity license to a second system for use as a registered capacity license is not allowed and vice versa.
Open	Yes	Permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC.

Exhibit 2
EMC Commercial Warranties

Software Warranty

- 1 Except as set forth below, the warranty duration for software provided under this GSA Schedule contract is ninety (90) days from the date of shipment, or the date of electronic availability, as applicable.
- 2 The warranty duration for Core Software (the programming or microcode firmware included by EMC with equipment to enable the equipment to perform its basic functions) is the same as the warranty duration of the equipment on which the Core Software is designed to operate.
- 3 The warranty duration for software identified as "EMC Select;" is as separately stated in the license agreement accompanying such software.

Product Warranty Table:

Avamar software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation/implementation not included. Requires separate purchase of combined implementation/installation service by Customer from EMC	None
Backup Manager for SharePoint software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
Blade Logic Brand software	No longer available for sale; maintenance only	Premium, Enhanced	Installation not included	None
Bus-Tech equipment	1 year; Basic	Premium, Enhanced, Basic	Installation not included	Disk drives, power supplies
Bus-Tech Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	Installation not included	None
Captiva Family software (Except Pixtools and QuickScanPro products)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced (Basic support is available for licenses purchased before April 9, 2012)	Installation not included	None

Captiva software — Pixtools and QuickScanPro products only	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Basic	Installation not included	None
Celerra Family equipment (excluding NX4, NS20, NS120, NS-480, NS-960, NS-G8, NS-G2, VG2, and VG8)	2 years; Premium	Premium	Included in product purchase	None
Celerra NX4 equipment	3 years; Enhanced	Enhanced, Premium	Installation not included	Power/cooling module (in processor enclosures, and in disk array enclosures), blade, Storage Processor (SP), SP DIMM memory, SP I/O module, SFP transceiver, standby Power supply, link control card, and disk
Celerra NX4 Core software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	Not Applicable
Celerra NS20 equipment	3 years; Enhanced	Enhanced, Premium	Installation not included	Power/cooling module (in processor enclosures), SFP transceiver module, disk
Celerra NS-120 and NS-480 equipment	3 years; Enhanced	Enhanced, Premium	Installation not included	Power/cooling module (in processor enclosures), blade, management I/O module (in Storage Processor enclosure), SFP transceiver, standby power supply, and disk
Celerra NS-960 and NS-G8 equipment	3 years; Enhanced	Enhanced, Premium	Installation not included	SFP transceivers, X-Blade enclosure power supply, X-Blade enclosure fan, Storage Processor enclosure power supply, Storage Processor enclosure fan, and disk
Celerra NS-G2 equipment	3 years; Enhanced	Enhanced, Premium	Installation not included	Power/cooling Module (in Processor Enclosures), fan blade, management I/O module (in Storage Processor enclosure), SFP transceiver, standby power supply, and disk
Celerra Manager software (excluding NX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Celerra Replicator software (excluding NX4)	90 days; defective media replacement Support during warranty available	Premium	Installation not included	None

	with purchase of a maintenance support option			
Celerra VG2 and VG8	3 years; Enhanced	Premium, Enhanced	Installation not included	Power/Cooling Module, SFP-compliant transceiver, UltraFlex I/O Module, Management Module
CLARiiON AX150 equipment	No longer available for sale; maintenance only	Enhanced, Basic	Installation not included	All components; Installation of AX150 Core software and system-based software releases
CLARiiON AX150/150i - EMC Insignia equipment	1 year; Basic	Enhanced, Basic	Installation not included	All components; Installation of AX150/150i Core software and system based software releases
CLARiiON AX4 series equipment	3 years; Enhanced	Premium, Enhanced	Installation not included	All components; Installation of AX4 Core software and system-based software releases
CLARiiON AX4 software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	Not Applicable
CLARiiON CX300 equipment	No longer available for sale; maintenance only	Premium, Enhanced	Included in product purchase	Disk drives
CLARiiON CX3-series equipment	No longer available for sale; maintenance only	Premium, Enhanced	Included in product purchase	Power supply, cooling units, small form factor pluggable transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool, DAE power supply, LCC; Installation of CX3-Series Core software and system-based software releases
CLARiiON CX4 - series equipment	No longer available for sale; maintenance only	Premium, Enhanced	Installation not included	Power supply, cooling units, small form factor pluggable transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool, DAE power supply, LCC; Installation of CX4-Series Core software and system-based software releases
Connectrix Family equipment (except Connectrix devices listed below)	3 years; Enhanced	Enhanced, Premium	Installation not included	Power supplies, fans, optics and the complete switch when applicable
Connectrix DS-6510B	3 years; Enhanced	Enhanced, Premium	Installation not included	Switch, Short Wave, SFP, Power Supply, Fan

Connectrix ED-DCX8510-8B, ED-DCX8510-4B, ED-DCX-B, ED-DCX-4B Directors	3 years; Enhanced	Enhanced, Premium	Installation not included but strongly recommended	SFP Optics, Power Supply, Blower, Cables
Connectrix NEX-5010, NEX5020, AP-7600B, AP-7420B, ES-5832B, MP-8000B, MP7500B, MP-7800B, MDS-FCOE-8	2 years; Premium	Premium	Included in product purchase	None
Connectrix ED-10000M Director	No longer available for sale; maintenance only	Premium	Included in product purchase	None
Connectrix B-Series Family switches; DS-220B, DS-4900B, DS-5000B, DS-4400M, DS-4700M, MP-1620M, MP-2640M, DS-4100B	No longer available for sale; maintenance only	Enhanced, Premium	Included in product purchase	Power supplies, fans, optics and the complete switch when applicable
Connectrix Manager software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
CopyPoint software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
DatabaseXtender software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
Data Domain System	1 year hardware only; Limited Software (DDOS) 90 day; defective media replacement Support for DDOS during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	Power supply, disk drives, SAS controller on ES20
Data Domain software	90 day; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
DiskXtender Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None

Documentum Family software (except ApplicationXtender)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced (Basic support is available for licenses purchased before April 9, 2012)	Installation not included	None
EmailXtender Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
EMC Backup Advisor Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
EMC Data Protection Advisor	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
EMC Centera Family equipment	2 years, Enhanced	Premium, Enhanced	Installation not included but strongly recommended	With Enhanced support option, Customer is responsible for resetting of modems and nodes
EMC Centera software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included but strongly recommended	None
EMC Cloud Tiering Appliance Equipment	1 year; Enhanced	Premium, Enhanced	Installation not included but strongly recommended	Disk Drives Power Supply
EMC Cloud Tiering Appliance Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
EMC Disk Library for Mainframe	2 years; Premium	Premium	Installation not included but strongly recommended	None
EMC Disk Library Family equipment (except for DL1500, DL3000, and 3D 4000)	2 years; Premium	Premium	Installation not included but strongly recommended	None
EMC Disk Library DL1500, DL3000, and 3D 4000 Family equipment	3 years; Enhanced	Premium, Enhanced	Installation not included but strongly recommended	None

EMC File Management Appliance Equipment	1 year; Enhanced	Premium, Enhanced	Installation not included but strongly recommended	Disk drives, power supplies
EMC File Management Appliance Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
EMC Geographically Dispersed Disaster Restart software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
EMC Greenplum Data Computing Appliance ("DCA")	1 year hardware only; Limited 90 days for software in the DCA; defective media replacement Support for software during warranty available with purchase of a maintenance support option	Premium (covers both hardware and software portion of DCA)	Installation not included	EMC will perform the installation of software updates included with the purchase of the DCA.
EMC Greenplum Data Integration Accelerator ("DIA")	1 Year hardware only; Limited 90 days for software in the DIA; defective media replacement Support for software during warranty available with the purchase of a maintenance support option	Premium (covers both hardware and software portion of the DIA)	Installation not included	EMC will perform the installation of software updates included with the purchase of the DIA
EMC Greenplum Family Standalone Production Software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
EMC Ionix ControlCenter Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
EMC Ionix Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
EMC IT Compliance Analyzer-Application Addition equipment	No longer available for sale; maintenance only	Premium, Basic	Installation not included	None
EMC PowerExchange PWX Connector to Greenplum	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None

EMC Rainfinity Appliance equipment	1 year; Enhanced	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	Installation not included	Disk drives and power supply
EMC Rainfinity Appliance software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)	Installation not included	
EMC SourceOne Family software (excluding EMC SourceOne eDiscovery)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
EMC SourceOne eDiscovery equipment	1 year; Enhanced	Premium, Enhanced	Installation not included but strongly recommended	Power supply, disk drives
EMC SourceOne eDiscovery software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
EMC VFCache	3 years; Enhanced	Enhanced	Installation not included	VFCache PCIe card
EMC VPLEX equipment	3 years, Premium	Premium	Installation not included but strongly recommended	None
EMC VPLEX software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Included in product purchase	None
eRoom software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced (Basic support is available for licenses purchased before April 9, 2012)	Installation not included	None
HomeBase software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced	Installation not included but strongly recommended	None
InfoMover	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None

Informative Graphics Brava! WebKit software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	Installation not included	None
Invista equipment	2 years; Premium	Premium	Included in product purchase	None
Ionix for IT Operations Intelligence (formerly Smarts)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
Ionix Network Configuration Manager (formerly Voyence)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
Isilon hardware	1 year; Limited	Isilon Gold, Isilon Platinum, Isilon Secure Note: Isilon support terms are located at: http://www.emc.com/support-training/support/emc-productwarranty-maintenance-use-rights.htm	Installation not included but strongly recommended	Power supplies, power cables, NVRAM batteries, Hard Disks, Rail kits, IB switches, IB cables, faceplates
Isilon software	90 day; defective media replacement Support during warranty available with purchase of a maintenance support option	Isilon Gold, Isilon Platinum, Isilon Secure Note: Isilon support terms are located at: http://www.emc.com/support-training/support/emc-productwarranty-maintenance-use-rights.htm	Installation not included but strongly recommended	None
IT Compliance Analyzer Application Edition software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
IT Performance Reporter Network Edition software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
IT Process Centre Request Management software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None

Kofax Ascent Capture software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Enhanced	Installation not included	None
MirrorView software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Navisphere Family software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
NetWorker Family software (except for NetWorker Fast Start)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included but strongly recommended	None
NetWorker Fast Start	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Basic, Enhanced	Installation not included	None
Open Migrator/LM software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Open Replicator For Symmetrix software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
PowerPath Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
ProSphere software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Basic	Installation not included	None
RecoverPoint software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included but strongly recommended	None
RecoverPoint equipment	3 years; Premium	Premium	Installation not included but strongly recommended	None

Replication Manager software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included but strongly recommended	None
RepliStor software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
SAN Copy software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
SnapView software (excluding AX4)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Software (all other EMC software products not listed separately in this table)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Basic	Installation not included	None
SRDF Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Symmetrix DMX Family equipment (excluding Symmetrix VMAX)	3 years; Premium (Prior to August 10, 2009: 2 years; Premium)	Premium	Included in product purchase	None
Symmetrix VMAX/VMAXe Family equipment (operating environment licensed separately)	3 years; Premium	Premium	Included in product purchase	Disk drives
Symmetrix DMX Enginuity (operating environment software)	3 years; Premium (Prior to August 10, 2009: 2 years; Premium)	Premium	Included in product purchase	None
Symmetrix VMAX/VMAXe Enginuity (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Included in product purchase	None
Symmetrix Management Console software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None

Symmetrix Manager software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Symmetrix Optimizer software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
Telestream Flip Factory software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	Installation not included	None
TimeFinder Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None
ViewPoint software for SAP	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
VNX equipment: VNX5100 VNX5300 VNX5500 VNX5700 VNX7500	3 years, Enhanced	Premium, Enhanced	Installation not included	Disks, DAE power supply, standby power supply, power cooling module, SFP-compliant transceiver, link control cards, and UltraFlex I/O module
VNX OE (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
VNX optional software products	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced	Installation not included	None
VNXe3300	3 years, Enhanced	Premium, Enhanced	Installation not included	Disk, power supplies (DAE and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD
VNXe3100	3 years, Basic	Premium, Enhanced, Basic	Installation not included	Disk, power supplies (DAE and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD

VNXe OE (operating environment software)	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100)	Installation not included	None
VNXe optional software products	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced: (VNXe3300) Premium, Enhanced, Basic: (VNXe3100)	Installation not included	None
Web Publisher Portlets software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	Installation not included	None
Woodwing Smart Connection Enterprise software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced, Basic	Installation not included	None
X-Hive Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Basic	Installation not included	None
xPression Family software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium, Enhanced (Basic support is available for licenses purchased before April 9, 2012)	Installation not included	None
z/OS Storage Manager software	90 days; defective media replacement Support during warranty available with purchase of a maintenance support option	Premium	Installation not included	None

**EMC Corporation
Warranty and Maintenance Pricing Descriptions**

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.

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.

Primary Support ²	Extended Support ³
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 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.	Extended Support requires a current EMC maintenance contract to be in place for the associated product.
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 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.

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 (EOSL) of a product occurs on the End-of Primary-Support 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.

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
GSA DISCOUNTS

Maintenance Discount Class	Part Numbers	Discount Class Description	SIN	Prepaid Maintenance Included in Original Order	Maintenance Renewals
EN-HM	EN-HM-MNT EN-HM-MNT-R (renewal only)	Hardware Maintenance - VMAX 10K/20K/40K	132-12	27.84%	7.38%
EN-SM	EN-SM-MNT EN-SM-MNT-R (renewal only)	Software Maintenance - VMAX 10K/20K/40K	132-33	27.84%	12.76%
G	G-MNT G-MNT-R (renewal only)	Hardware Maintenance	132-12	5.97%	10.15%
H	H-MNT H-MNT-R (renewal only)	Software Maintenance - Mid-Tier Platform	132-33	29.64%	14.94%
H3	H3-MNT H3-MNT-R (renewal only)	Software Maintenance - Multi-platform	132-33	29.64%	14.94%
IS	IS-HW-MNT IS-HW-MNT-R (renewal only)	Isilon Hardware Maintenance	132-12	15.63%	8.16%
IS	IS-SW-MNT IS-SW-MNT-R (renewal only)	Isilon Software Maintenance	132-33	15.63%	13.50%
UM	UM-HW-MNT UM-HW-MNT-R (renewal only)	Hardware Maintenance – VNX 2	132-12	16.97%	7.26%
UM	UM-SW-MNT UM-SW-MNT-R (renewal only)	Software Maintenance – VNX 2	132-33	16.97%	12.66%
UM-H	UM-H-MNT UM-H-MNT-R (renewal only)	Hardware Maintenance - VNX	132-12	18.05%	7.26%
UM-S	UM-S-MNT UM-S-MNT-R (renewal only)	Software Maintenance - VNX	132-33	18.05%	12.66%
CLE	CLE-MNT CLE-MNT-R (renewal only)	Hardware Maintenance – VMAX Cloud Edition	132-12	5.97%	10.15%
XT	XT-MNT XT-MNT-R (renewal only)	Hardware Maintenance - XtremIO	132-12	15.63%	8.16%
J	J-HW-MNT J-HW-MNT-R (renewal only)	Hardware Maintenance - Flash	132-12	13.84%	7.38%
J	J-SW-MNT J-SW-MNT-R (renewal only)	Software Maintenance - Flash	132-33	13.84%	12.76%
PH/PM	PH/PM-MNT PH/PM-MNT-R (renewal only)	Hardware Maintenance - Data Domain	132-12	18.03	24.50%
DH/DM	DH/DM-MNT DH/DM-MNT-R (renewal only)	Software Maintenance - Data Domain	132-33	18.03%	24.50%
PE	PE-MNT PE-MNT-R (renewal only)	Hardware Maintenance - Data Domain	132-12	9.28%	24.40%
DE	DE-MNT DE-MNT-R (renewal only)	Software Maintenance - Data Domain	132-33	9.28%	24.40%
PH/PM-OTH	PH/PM-OTH-MNT PH/PM-OTH-MNT-R (renewal only)	Hardware Maintenance - BRS Products (other than Atmos , Centera, and Data Domain)	132-12	18.03%	13.72%
PE-OTH	PE-OTH-MNT PE-OTH-MNT-R (renewal only)	Hardware Maintenance - BRS Products (other than Atmos , Centera, and Data Domain)	132-12	9.28%	13.60%
DH/DM-OTH	DH/DM-OTH-MNT DH/DM-OTH-MNT-R (renewal only)	Software Maintenance - BRS Products (other than Atmos , Centera, and Data Domain)	132-33	18.03%	13.72%
DE-OTH	DE-OTH-MNT DE-OTH-MNT-R (renewal only)	Software Maintenance - BRS Products (other than Atmos , Centera, and Data Domain)	132-33	9.28%	13.60%
VPLEX	VPLEX-HW-MNT VPLEX-HW-MNT-R (renewal only)	Hardware Maintenance - VPLEX	132-12	27.84%	7.38%
VPLEX	VPLEX-SW-MNT VPLEX-SW-MNT-R (renewal only)	Software Maintenance - VPLEX	132-33	27.84%	12.76%

Exhibit 3
EMC Commercial Maintenance and Support Terms

Basic Support

The following chart lists the service features of Basic Support provided under EMC's standard warranty and/or maintenance terms. Basic Support is available as to:

1. EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table set forth on Exhibit 2 above as
 - including Basic Support during the applicable warranty period; or
 - eligible for Basic Support during a subsequent maintenance period
2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Basic Support during a maintenance period

SERVICE FEATURE	DESCRIPTION	BASIC SUPPORT – COVERAGE DETAILS
REMOTE TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface 7X24 to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem, or, (ii) when deemed necessary by EMC Onsite Support as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 2 local business hours; on a 5X9 basis Severity Level 2: 4 local business hours; on a 5X9 basis Severity Level 3: 8 local business hours; on a 5X9 basis Severity Level 4: 12 local business hours; on a 5X9 basis
ONSITE SUPPORT	EMC sends authorized personnel to the installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support is necessary.	Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing.
REPLACEMENT PARTS	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement parts will be shipped to the Customer for next local business day arrival. Local country shipment cut-off times may impact the next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.
SOFTWARE RELEASES	EMC provides the rights to new releases as made generally available by EMC.	Included. Customer will perform the installation of new releases of Software unless otherwise deemed necessary by EMC.
SECURE REMOTE SUPPORT (“CONNECT HOME”)	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination.	Not included.
ACCESS TO WEB-BASED CUSTOMER SUPPORT TOOLS	Customers who have properly registered have access on a 7X24 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Powerlink® website.	Included.

*Severity Levels:

- **Severity 1** **Critical:** a severe problem is preventing the customer or workgroup from performing critical business functions.
- **Severity 2** **High:** the customer or workgroup is able to perform job function, but performance of job function is degraded

- or severely limited.
- **Severity 3** **Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4** **Request:** minimal system impact; includes feature requests and other non-critical questions.

Enhanced Support

The following chart lists the service features of Enhanced Support provided under EMC’s warranty and/or maintenance terms. Enhanced Support is available as to:

1. EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table set forth on Exhibit 2 above as including Enhanced Support during the applicable warranty period; or eligible for upgrade to Enhanced Support during the applicable warranty period; or eligible for Enhanced Support during a subsequent maintenance period
2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Enhanced Support during a maintenance period

SERVICE FEATURE	DESCRIPTION	ENHANCED SUPPORT <input type="checkbox"/> COVERAGE DETAILS
REMOTE TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface on a 7X24 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Support as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 1 hour; on a 7X24 basis Severity Level 2: 3 hours; on a 7X24 basis Severity Level 3: 4 local business hours Severity Level 4: 10 local business hours
ONSITE SUPPORT	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support necessary.	Included for Equipment only. Initial Onsite Support response objective is next local business day, on a 5X9 basis, after EMC deems Onsite Support is necessary. Onsite Support does not apply to Software, but may be separately purchased.
REPLACEMENT PARTS	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement part delivery objective is next local business day. Local country shipment cut-off times may impact next local business day delivery of replacement parts and the related onsite support. Installation of Customer Replaceable Units (CRUs) is the responsibility of the Customer. Refer to Product Maintenance table for listing of parts designated as CRUs. Installation of all other non-CRU parts performed by EMC. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If a Customer installs the CRU, the Customer is responsible for returning the replaced CRU to a facility designated by EMC.
SOFTWARE RELEASES	EMC provides the rights to new releases as made generally available by EMC.	Included. Customer will perform the installation of new releases of Software, unless otherwise deemed necessary by EMC.
SECURE REMOTE SUPPORT (“CONNECT HOME”)	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Remote Technical support and Onsite Support will apply as previously described.
ACCESS TO WEB-BASED CUSTOMER SUPPORT TOOLS	Customers who have properly registered have access on a 7X24 basis to EMC’s web-based knowledge and self-help customer support tools via the EMC Powerlink® website.	Included.

*Severity Levels:

- **Severity 1** **Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2** **High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3** **Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4** **Request:** minimal system impact; includes feature requests and other non-critical questions.

Premium Support

The following chart lists the service features of Premium Support provided under EMC’s warranty and/or maintenance terms. Enhanced Support is available as to:

1. EMC[®] Equipment which is identified on the EMC Product Warranty and Maintenance Table set forth on Exhibit 2 above as including Premium Support during the applicable warranty period; or eligible for upgrade to Premium Support during the applicable warranty period; or eligible for Premium Support during a subsequent maintenance period
2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Premium Support during a maintenance period

SERVICE FEATURE	DESCRIPTION	ENHANCED SUPPORT <input type="checkbox"/> COVERAGE DETAILS
REMOTE TECHNICAL SUPPORT	Customer may contact EMC by telephone or web interface on a 7X24 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Support as described below.	Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 30 minutes; on a 7X24 basis Severity Level 2: 2 hours; on a 7X24 basis Severity Level 3: 3 local business hours Severity Level 4: 8 local business hours
ONSITE SUPPORT	EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support necessary.	Included for Equipment only. Initial Onsite Support response objective is based on Severity Level, within the following time period after EMC deems Onsite Support is necessary. Severity Level 1: 4 hours on a 7X24 basis Severity Level 2: Same day on a 7X24 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours Onsite Support does not apply to Software, but may be separately purchased.

REPLACEMENT PARTS	EMC provides replacement parts when deemed necessary by EMC.	Included. Replacement part delivery objective is based upon Severity Level, within the following time period after EMC deems a replacement part is necessary: Severity Level 1: 4 hours on a 7X24 basis Severity Level 2: Same day on a 7X24 basis Severity Level 3: Next business day, local business hours Severity Level 4: Next business day, local business hours Local country shipment cut-off times may impact the same day/next local business day delivery of replacement parts and the related Onsite Support. Installation of all replacement parts performed by EMC as part of Onsite Support, but Customer has option to perform installation of Customer Replaceable Units (CRUs). See EMC Product Warranty and Maintenance Table for listing of parts designated as CRUs for specific Equipment. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If Customer installs the CRU, Customer is responsible for returning the replaced CRU to a facility designated by EMC.
SOFTWARE RELEASES	EMC provides the rights to new releases as made generally available by EMC.	Included. Customer will perform the installation of new releases of Software, unless otherwise deemed necessary by EMC. EMC will perform the installation of new releases of software which EMC determines is equipment operating environment software.
SECURE REMOTE SUPPORT (“CONNECT HOME”)	Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.	Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Remote Technical support and Onsite Support will apply as previously described.
ACCESS TO WEB-BASED CUSTOMER SUPPORT TOOLS	Customers who have properly registered have access on a 7X24 basis to EMC’s web-based knowledge and self-help customer support tools via the EMC Powerlink® website.	Included.

*Severity Levels:

- **Severity 1** **Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2** **High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3** **Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4** **Request:** minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options (“EMC Support Information”) on this Exhibit 3 to Attachment A apply only to those products or support options ordered by the Ordering Activity at the time that the EMC Support Information is current. Contractor, through EMC, may change the EMC Support Information at any time. The Ordering Activity will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between Contractor and the Ordering Activity, but any such change shall not apply to products or support options ordered by the Ordering Activity prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. “EMC Service Area” means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located.

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Enterasys Networks, Inc.
50 Minteman Road
Andover, MA 01810

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

1. **Scope.** This Rider and the attached **Enterasys Networks, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

ENTERASYS NETWORKS, INC.

ENTERASYS NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

IMPORTANT: THIS DOCUMENT IS AN AGREEMENT ("AGREEMENT") BETWEEN YOU, THE ORDERING ACTIVITY/FEDERAL AGENCY, AND ENTERASYS NETWORKS, INC. ("ENTERASYS") THAT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SOFTWARE CONTAINED ON CD-ROM OR OTHER MEDIA. YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS BEFORE INSTALLATION AND USE OF ANY SOFTWARE PROGRAMS PROVIDED BY ENTERASYS. BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO BECOME BOUND BY THE TERMS, CONDITIONS AND RESTRICTIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH AND ACCEPT THE TERMS OF THIS AGREEMENT, YOU SHOULD PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ENTERASYS NETWORKS, 50 MINUTEMAN ROAD, ANDOVER, MASSACHUSETTS 01810 AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED. QUESTIONS REGARDING THIS LICENSE OR LEGAL NOTICES SHOULD BE FORWARDED TO ENTERASYS NETWORKS, INC., ATTN: LEGAL DEPARTMENT, 35 INDUSTRIAL WAY, ROCHESTER, NEW HAMPSHIRE 03867.

1. LICENSE. Subject to the terms and restrictions set forth in this Agreement, ENTERASYS NETWORKS, INC. ("ENTERASYS") grants you a non-exclusive non-transferable (except as provided herein) license to use the enclosed machine-readable form of software programs or code contained in firmware, chips or other media ("Programs"), as well as the accompanying documentation (the Programs, the media embodying the Programs, and the documentation are collectively referred to in this Agreement as the "Programs") delivered to you for use on or with the ENTERASYS device if You agree to the following terms and conditions:

2. COPYRIGHT. The Programs, and all related documentation, are protected by copyright and title to all programs is retained by ENTERASYS and ENTERASYS' third party licensors. You shall not copy or otherwise use the Programs, in whole or part, except as expressly permitted in this Agreement. You must reproduce and maintain the copyright notice on any authorized copy you make or use of the Programs. You shall not sell, lease, transfer, sublicense, or otherwise make available or permit access to the Programs, or any portion thereof, to any other party.

3. AUTHORIZATION. You are authorized to make multiple copies of the Programs and the accompanying documentation provided that:

- You received this license document and accompanying media and documentation from ENTERASYS.
- You copy the Programs only to be used with ENTERASYS-supplied devices that are used with the Programs.
- You limit copies to devices that are owned or controlled by You.
- You include the ENTERASYS and ENTERASYS' third party licensors' copyright notice on all copies of the Programs and documentation.

You may physically transfer the Programs and this License, along with the related ENTERASYS device, if applicable, to another party only if (i) the other party accepts the terms, conditions and restrictions of this License, (ii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to ENTERASYS, (iii) the related ENTERASYS device, for Programs designed solely to operate on ENTERASYS devices, is also transferred to the other party, and (iv) you comply with all applicable laws including any import/export control regulations.

4. LIMITED WARRANTY. ENTERASYS warrants that the Programs will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from the date of shipment. This warranty is void if failure is the result of accident, abuse or misuse.

ENTERASYS warrants that any magnetic diskettes on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such diskette should occur during this 90-day period, the diskette may be returned to ENTERASYS NETWORKS, INC. at 50 Minuteman Road, Andover, Massachusetts 01810 U. S. A., and ENTERASYS will replace the diskette without charge to you. ENTERASYS shall have no responsibility to replace diskettes if the failure of diskettes results from accident, abuse or misuse of the diskettes.

The program contains third party software which is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the program could lead directly to death, personal injury, or severe physical or environmental damage ("High

Risk Activities”). Accordingly, ENTERASYS and ENTERASYS’ third party licensors specifically disclaim any express or implied warranty of fitness for High Risk Activities.

EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS ARTICLE 4, ENTERASYS AND ENTERASYS’ THIRD PARTY LICENSORS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This limited warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.

5. **LIMITATION OF LIABILITY.** Your exclusive remedy and the entire liability of ENTERASYS and ENTERASYS’ third party licensors related to the Programs shall be, at ENTERASYS’ option: (i) refund of the price paid for the Programs, (ii) correction of the Programs so they perform as warranted, or in the case of magnetic disk failure, expressly limited to replacement of diskettes as provided above. In no event will ENTERASYS or anyone else who has been involved in the creation, production or delivery of the Programs be liable for any damages, including, without limitation, direct, incidental or consequential damages, loss of anticipated profits or benefits, resulting from the use of the Programs, even if ENTERASYS has been advised of the possibility of such damages.

6. **TERM.** The Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. You agree that, upon such termination, you will destroy all copies of the Programs and related documentation. Sections 2, 3, 4, 5, 6, 7, 8, and 9 shall survive termination of this Agreement for any reason.

7. **CONFIDENTIALITY.** You agree that the Programs are confidential and proprietary to ENTERASYS and ENTERASYS’ third party licensors. Accordingly, you may not decompile, reverse engineer or otherwise manipulate the Programs. You agree to use Your best efforts and take all reasonable steps to ensure that no unauthorized personnel shall have access to the Programs and that no unauthorized copy, publication, electronic transmission, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify ENTERASYS of any unauthorized access or use thereof.

8. **U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND.** If you are licensing the Software on behalf of the U.S. Government (“Government”), the following provisions apply to you. If the Software is supplied to the Department of Defense (“DoD”), it is classified as “Commercial Computer Software” under paragraph 252.227-7014 of the DoD Supplement to the Federal Acquisition Regulations (“DFARS”) (or any successor regulations) and the Government is acquiring only the license rights granted herein (the license rights customarily provided to non- Government users). If the Software is supplied to any unit or agency of the Government other than DoD, it is classified as “Restricted Computer Software” and the Government’s rights in the Software are defined in paragraph 52.227-19 of the Federal Acquisition Regulations (“FAR”) (or any successor regulations) or, in the case of NASA, in paragraph 18.52.227-86 of the NASA Supplement to the FAR (or any successor regulations). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. The Contractor for the Programs is ENTERASYS NETWORKS, INC., 50 Minuteman Road, Andover, Massachusetts 01810.

9. **GENERAL.** The rights of ENTERASYS and Your obligations under this Agreement shall inure to the benefit of ENTERASYS’ successors and assigns. ENTERASYS waiver of any right shall not constitute a waiver by ENTERASYS or its licensors of that or any other right in the future. The rights and obligations of the parties to this Agreement shall be governed and construed in accordance with the laws Federal laws of the United States without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

YOUR USE OF THE PROGRAMS ACKNOWLEDGES THAT YOU HAVE READ THIS END-USER SOFTWARE LICENSE, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, CONDITIONS AND RESTRICTIONS. YOU FURTHER AGREE THAT THIS LICENSE IS THE COMPLETE AND EXCLUSIVE STATEMENT OF YOUR AGREEMENT WITH ENTERASYS AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, NAMELY THE LICENSING OF THIS PRODUCT.

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:
 - 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**

FORTINET, INC.

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 repair or replace the non-conforming Software with software that substantially conforms to Contractor's functional specifications. Except as otherwise agreed by Contractor in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions in this Attachment A of the license granted by Contractor for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any replacement software is delivered. If Contractor determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Contractor; provided that the non-conforming Software (and all copies thereof) is first returned to Contractor. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Contractor that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Attachment A, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

5. Disclaimer of Other Warranties and Restrictions.

EXCEPT FOR THE LIMITED WARRANTY SPECIFIED IN SECTION 4 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM CONTRACTOR. EXCEPT AS EXPRESSLY COVERED UNDER THE LIMITED WARRANTY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY, SELECTION AND PERFORMANCE OF THE PRODUCT IS WITH THE PURCHASER OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE HARDWARE WARRANTY PERIOD DISCUSSED ABOVE DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIFONE WHICH HAS A NINETY (90) DAY LIMITED WARRANTY AND FORTITOKEN WHICH HAS A 365 DAY WARRANTY FROM THE DATE OF SHIPMENT FROM CONTRACTOR'S FACILITIES, AND THE SOFTWARE WARRANTY DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIGATE-ONE AND VDOM SOFTWARE.

The warranty in Section 4 above does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, donation, testing or demonstration purposes or for which Contractor does not charge a purchase price or license fee. In the case of beta, testing, evaluation, donation or free Software or Product, the end user acknowledges and agrees that such Software or Product may contain bugs or errors and could cause system failures, data loss and other issues, and the Ordering Activity agrees that such Software or Product is provided "as-is" without any warranty whatsoever, and Contractor disclaims any warranty or liability whatsoever. An Ordering Activity's use of evaluation or beta Software or Product is limited to thirty (30) days from original shipment unless otherwise agreed in writing by Contractor.

6. U.S. Government End Users.

The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms of this Attachment A and its successors.

7. Open Source Software.

Fortinet's products may include software modules that are licensed (or sublicensed) to the user under the GNU General Public License, Version 2, of June 1991 ("GPL") or GNU Lesser General Public License, Version 2.1, of February 1999 ("LGPL") or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any Open Source Software covered under the GPL, the source code is made available on this CD or download package. If any Open Source Software licenses require that Contractor provide rights to

use, copy or modify a Open Source Software program that are broader than the rights granted in this Attachment A, then such rights shall take precedence over the rights and restrictions herein. All open source software modules are licensed free of charge. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "AS-IS" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third party license disclosures applicable to certain Fortinet products, may be obtained by contacting Contractor through Fortinet's Legal Department at legal@fortinet.com.

EXHIBIT A – FORTICARE/FORTIGUARD SERVICES

DEFINITIONS

1. "Ordering Activity" means any person or entity that has purchased a Service Contract from Contractor.
2. "Defective Unit" means a Product purchased by the Ordering Activity which has ceased to operate in accordance with Fortinet's Product Documentation.
3. "Hardware" means the Fortinet computer peripheral devices excluding all Software incorporated in or bundled with such devices.
4. "No Trouble Found Unit(s)" means a Product that has been returned to Fortinet as a Defective Unit by the Ordering Activity, and is later discovered to be in proper working order.
5. "Product(s)" means any Fortinet Hardware with associated Software or stand-alone Software product which is/are available for sale.
6. "Registration Date" means the date when the Service Contract is registered via Fortinet's website: <https://support.fortinet.com>.
7. "Renewal Service Contract" means a Service Contract (FortiCare and/or FortiGuard), as identified in Contractor's then current GSA price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at Fortinet's Support site.
8. "Return Material Authorization" or "RMA" means the required number or code obtained from Fortinet prior to returning a Defective Unit for a Replacement Unit.
9. "Replacement Unit" means a Product shipped by Fortinet to replace an Ordering Activity reported Defective Unit for which the Ordering Activity has obtained an RMA.
10. "Service Contract" means the purchase order for the Services purchased by the Ordering Activity as evidenced by their Service Contract Registration Document.
11. "Service Plan Documentation" means the Fortinet issued collateral, product description, or documentation which outlines the Services to be performed by Fortinet.
12. "Service Contract Registration Document" means the electronic document emailed by Fortinet with a contract registration number to the email address provided for in the Order Documentation which contains the Ordering Activity's entitlements.
13. "Services" means any individual or combination of Support and/or Subscription services purchased by the Ordering Activity and evidenced in the Ordering Activity's Service Entitlement Document.
14. "Software" means the Fortinet computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by Fortinet.
15. "Subscription Services" means Fortinet's FortiGuard suite of services, per Fortinet's current Customer Support Services Reference Guide, which may include one or all of the following: Antivirus, Antispam, IPS, and Web Filtering.
16. "Support" or "Support Services" means Fortinet's technical telephone, email, and web assistance provided by Fortinet or its Partners, per Fortinet's current Customer Support Services Reference Guide, to help the Ordering Activity with problem resolutions.

SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED

1. Service Contracts Offered. Contractor through Fortinet offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, Fortinet offers Subscription Services and other Product service offerings to protect Ordering Activity's newly purchased assets.

2. Ordering and Use. Each Service Contract purchased by Ordering Activity is valid for a single unit of Product. For clarity, use of a Service Contract with a replacement unit, or with certain upgraded units identified by Contractor through Fortinet as applicable to the Service Contract, shall not be considered a material breach of this Attachment A.

TERMS OF SERVICE

1. Registration. Ordering Activity must register the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by Contractor through Fortinet of the applicable Product and Service Contract to Ordering Activity. SERVICE CONTRACTS WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM CONTRACTOR THROUGH FORTINET SHALL BE FORFEITED AND CONTRACTOR SHALL HAVE NO OBLIGATION TO THE ORDERING ACTIVITY REGARDING THIS ATTACHMENT A OR ANY RELATED SUPPORT SERVICES. It is Ordering Activity's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period. Notwithstanding anything to the contrary, Contractor through Fortinet may register any Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Ordering Activity authorizes Contractor through Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.
2. Renewal Registration. In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the "Renewal Service Contract Effective Date"). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Ordering Activity's previous service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Ordering Activity's previous Services Contract. In such case the start date shall be the date of registration.

For example and for illustration purposes only, in the event a one year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one year Renewal Service Contract is registered two-hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

3. Support Policy. The delivery of all Services shall be subject to and provided in accordance with Contractor through Fortinet's then current Customer Support Services Reference Guide ("Reference Guide"). The Reference Guide details the Service and Support process and any service levels provided by Contractor through Fortinet with your specific Fortinet Support Services. The Reference Guide is available at the following link <https://support.fortinet.com/Login/UserLogin.aspx>. The Reference Guide is subject to change and Fortinet shall post notices of any changes on the support website <https://support.fortinet.com/Login/UserLogin.aspx> with no less than thirty (30) days notice prior to the effective date of the change. The Ordering Activity hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provide for in any notification, the Ordering Activity accepts and agrees the changes to the Reference Guide. Furthermore, the Ordering Activity hereby acknowledges and agrees that Ordering Activity is solely responsible for adhering to and monitoring Contractor through Fortinet's support website for updates and changes to the Reference Guide.
4. Product Life Cycle Policy. All Services provided hereunder are subject to Fortinet's Product Life Cycle Policy which is available Fortinet's Support website.

POINT OF CONTACT

Contractor through Fortinet may, at its option, provide the Services directly or indirectly, through any of its FortiPartner, agents, or sub-contractors.

DESCRIPTION OF PROGRAMS

1. Principle Period of Services. Services are provided during the hours described in the Reference Guide.
2. Telephone and Email Support. All telephone and email support will be delivered in accordance with any Service Plan Documentation and Fortinet's Support Policy.
3. Web-based Support. The Fortinet corporate website www.fortinet.com provides access to a variety of information including on-line documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the Fortinet support website <https://support.fortinet.com>. This site includes access to the FortiCare ticketing system for product and contract registration as well as creation of ticket and webchat requests. It may also include Subscription Service updates, Maintenance and Feature Releases, and technical support alerts. Login information and passwords are provided upon registration of the account. Ordering Activity hereby agrees and warrants that only authorized information technology personnel shall have access to the login and password information. Contractor through Fortinet shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.

4. **Hardware Support.** If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with Fortinet's Support Policy. Please refer to Fortinet's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, Contractor through Fortinet is not responsible for any delays in delivery related to export or customer regulations or processes. For any Service Contract which incorporates four-hour replacement Services, Ordering Activity acknowledges that Contractor through Fortinet shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot ("Staging Period"). As such Ordering Activity's four-hour replacement Services shall not commence until the end of such Staging Period.
5. **Software/Firmware Updates.** If Ordering Activity's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this Attachment A. Ordering Activity may access such updates via password-protected web access. Ordering Activity may install only one (1) copy of the upgrade per product covered by a Service Contract. Support shall be provided on the then-current major release of Product and the previous release of software. At Contractor through Fortinet's option, Fortinet may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration.
6. **Real-Time Updates.** If the Ordering Activity's Service Contract contains Subscription Services, the Ordering Activity will have access to Contractor through Fortinet's real-time Anti-Virus and Network Intrusion Detection System ("NIDS") updates that will protect the Ordering Activity against some of the latest network-based threats. These updates may either be pushed to properly configured and authorized Products, retrieved on a pre-scheduled basis, or retrieved manually by the Ordering Activity.

EXCLUSIONS

1. **General.** Ordering Activity acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, Contractor through Fortinet may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by Contractor through Fortinet hereunder do not include warranty, support and/or maintenance for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Fortinet. Contractor through Fortinet is not required to provide Services for problems arising from: (i) Ordering Activity's failure to implement all maintenance or features issued under this Attachment A; (ii) any alterations of or additions to the Products performed by parties other than Contractor through Fortinet; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by Contractor through Fortinet.
2. **On-Site Support Not Included.** Support Services are strictly limited to telephone and electronic support.

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.

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:

Product Licensed	License Type
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.

Infoblox, Inc.
4750 Patrick Henry Drive
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 **Infoblox, 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**

INFOBLOX, INC.

INFOBLOX, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **Sale and Purchase.** Ordering Activity agrees to purchase from Contractor, for Ordering Activity's own internal use only, the Products and related services set forth on the Initial Purchase Order, as well as all future Products, services and licenses set forth in purchase orders issued by Ordering Activity and accepted by Contractor (the Initial Purchase Order and all such future orders collectively, "Purchase Orders"). "Products" are Infoblox's products specified in a Purchase Order.

2. **Limited License.** Subject to Ordering Activity's compliance with this Attachment A and payment of all license fees, Contractor grants Ordering Activity a non-exclusive, non-transferable license ("License") to operate the Software for which Ordering Activity has paid the applicable license fees to Contractor or an Approved Source. Software is licensed for use only in object code form (i) on a single hardware chassis which has been provided or a third party platform authorized by Infoblox, and (ii) in accordance with the applicable capacity and other use limitations, if any, set forth on the applicable purchase order accepted by Infoblox or an Approved Source. Use of some software modules available for the hardware may be limited or require purchase of a separate license from Contractor; Ordering Activity is licensed to use only the Software as indicated on the applicable purchase order. In order to use the Software, Ordering Activity may be required to input a registration number or a product authorization key and register Ordering Activity's copy of the Software online at Infoblox's website to obtain the necessary license key or license file. If Infoblox provides any client or other software for installation on equipment not provided by Infoblox, then such software may only be used in connection with the Infoblox product. If Infoblox authorizes Ordering Activity to use Software for replacement of an existing software package, then upon installation of the replacement Software, Ordering Activity's license to the replaced software package will terminate and Ordering Activity must delete and cease all use of the replaced software package.

3. **Software; Restrictions.** All software set forth in a Purchase Order or incorporated into or provided for use in or with a Product (whether initially, as part of support or otherwise)(collectively, "Software") is not sold, but rather is licensed solely for Ordering Activity's internal use (including use by Ordering Activity's affiliates and service providers on behalf of Ordering Activity provided Ordering Activity is responsible for such use) in object code form on the applicable Product hardware platform provided by Infoblox, or for virtual appliance products indicated on a Purchase Order, on a hardware platform authorized by Infoblox, in each case in accordance with the applicable capacity and other use limitations, if any, set forth on the applicable Purchase Order. Such license is non-exclusive, non-transferable and does not include the right to (and Contractor will not directly or indirectly) extract, transfer, modify, decompile, disassemble, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of the Software. Except for the license above, Infoblox retains all right, title and interest relating to the Software and any intellectual property resulting from services; no other licenses express or implied are granted. Ordering Activity will not remove any names, designations or notices from any Product. The Software constitutes confidential and trade secret information of Infoblox and shall not be disclosed to any third party. Any references to "sale" or "purchase" in this Attachment A shall be interpreted in accordance with this Section 3.

4. **Limited Warranty; Disclaimer.** Contractor provides the following Limited Warranty to Ordering Activity: the Products when shipped to Ordering Activity will materially conform to the applicable Specifications as defined in Exhibit A. Ordering Activity may make a claim for breach of this Limited Warranty (i) at any time prior to the first anniversary of the date of shipment by Infoblox with respect to Product hardware and (ii) at any time prior to 90 days following the date of shipment by Infoblox with respect to Product software whether or not embedded (each a "Limited Warranty Period"), after which time the Limited Warranty shall be deemed expired and void. For each claim of breach of the Limited Warranty which is received by Contractor during the applicable Limited Warranty Period for the Product, Contractor will, at Contractor's option and as Ordering Activity's remedy: (1) repair the defective Product hardware or software, (2) replace the defective Product hardware or software with comparable Product hardware or software, or (3) refund the amount paid for the defective Product hardware or software, as applicable, upon its return. All warranty claims are subject to the warranty service process set forth in Exhibit B; all Products must first be issued an RMA number by Infoblox prior to return of the Product unit and must include the RMA number on the shipping container. The warranty does not apply to units that have been (i) mishandled or damaged by failure to provide a suitable installation or operating environment, (ii) used, maintained or stored other than in conformity with documentation and instruction provided by Infoblox, (iii) subjected to physical damage, neglect or the elements, (iv) damaged by third party software, equipment or viruses or (v) opened or serviced by anyone other than Infoblox or an authorized service provider. Replacement Products will be warranted for the remainder of the original Limited Warranty Period or 30 days from the date of shipment of the repaired or replacement Products, whichever is longer. Purchasing additional services or Products from Contractor does not extend this warranty period. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, CONTRACTOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF CONTRACTOR.

5. **Government Use.** If a Product is provided to any unit or agency of the United States Government (“U.S. Government”), the following provisions shall apply: All software and accompanying documentation are deemed to be “commercial 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 U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

6. **Support.** Support services available as of the Effective Date are described in Exhibit A. Subject to Ordering Activity’s compliance with all terms of this Attachment A and payment of Contractor’s GSA support fees, Contractor through Infoblox will provide the Support set forth in a Purchase Order. Contractor through Infoblox will use reasonable efforts to make available its then standard enterprise support services for a Product for three years after purchase of the Product. If purchased by Ordering Activity, the first annual Support period begins upon the date of Product shipment by Contractor through Infoblox.

EXHIBIT A – SUPPORT TERMS

1. **GENERAL.** Contractor through Infoblox makes available the support services described below (“Support”). Provision of Support is subject to Ordering Activity remaining in good standing under an effective Support contract. The start date for the first applicable period of Support begins upon shipment of the applicable Product by Contractor through Infoblox. Ordering Activity must register Product units online at www.infoblox.com prior to receiving Support; Contractor through Infoblox requires one business day to process registrations. Ordering Activity must provide the Product unit serial number when opening technical support requests with Infoblox technical support. All Support is provided in the English language.

2. DEFINITIONS

2.1 “**Error**” means an error in the Software that causes the Software to materially fail to perform in accordance with the Specifications.

2.2 “**Software**” means the software programs provided to Ordering Activity as part of the Product and that are licensed pursuant to this Attachment A together with any Updates and Upgrades furnished by Infoblox to Ordering Activity.

2.3 “**Specifications**” means the published specifications applicable to the Infoblox Products that are in effect as of the date the Infoblox Products are shipped to Ordering Activity; as such Specifications may be updated, modified or revised by Infoblox.

2.4 “**Updates**” means a Software release, if and when available, consisting of error corrections and patches, in object code form, which is made generally available by Infoblox to its support recipients without additional charge, and is generally indicated by a change in the digit to the right of the release number (e.g., a change from version X.1r2 to X.1r3) and any corrections and updates to the associated documentation.

2.5 “**Upgrades**” means a Software release, if and when available, containing new enhancements, features or functionality, in object code form to application software, which is made generally available by Infoblox to its support recipients without additional charge and generally indicated by a change in the feature release number to the right of the decimal point (e.g., a change from version X.2r1 to X.3r1) and the associated documentation.

2.6 “**Workaround**” shall mean a temporary solution to a software error that Infoblox has implemented, or enabled customers to implement and that allows the software to regain functionality and provide major software functions in accordance with the specifications.

3. PREMIUM MAINTENANCE SERVICES

Premium Maintenance Services described below are subject to payment of all annual Premium Maintenance Services fees. Premium Maintenance Services are provided by telephone, email, or World Wide Web. Premium Maintenance Services include assistance with initial product deployment and configuration, answers to questions related to product features, diagnoses and corrections of software errors, and provides configuration or software workarounds when applicable. Contractor through Infoblox is only obligated to respond to requests for support from individuals designated as authorized personnel. Provision of timely and effective support, including diagnosis and resolution of Errors, may require the use of on-line diagnostics of the Software by authorized Infoblox support personnel to assist with problem diagnosis. Such on-line diagnostics access may include the use of remote support tools from Infoblox or third party tools that Infoblox technical support may use to access the Ordering Activity’s systems; any access of Ordering Activity systems shall be at Ordering Activity’s discretion and in accordance with Ordering Activity’s requirements. Phone numbers and addresses below may be updated by Infoblox from time to time.

3.1 **Telephone Support.** Infoblox’s technical service center (“TSC”) will use reasonable efforts to respond to requests by phone for technical support issues and requests within 1 hour on a 24x7x365 basis. Telephone Support may be obtained by calling the number for the applicable region provided by Contractor through Infoblox.

3.2 **Email Support.** Technical support is provided through the TSC via email to support@infoblox.com. The TSC will use reasonable efforts to respond in accordance with the response targets in Table 1 below to email requests by authorized contacts. For Priority 1 technical support issues, Ordering Activity is encouraged to contact Contractor through Infoblox through the telephone support described above.

3.3 **Web Support.** Web support is available on a 24x7 basis via www.infoblox.com/support. All release notes, product documentation and software downloads are available for download from the above mentioned URL. Web support also allows

users to log new support incidents and check the status of previously submitted incidents on a 24 x 7 basis. Ordering Activity must register at www.infoblox.com and establish password and log in information prior to access of web support.

3.4 **Updates and Upgrades.** Premium Maintenance Services entitles Ordering Activity to receive all Updates and Upgrades applicable to Ordering Activity's Product hardware platform. Notification for Update and Upgrade releases is provided electronically by Infoblox technical support. Ordering Activity must register its Products online at http://www.infoblox.com/support/product_registration.cfm in order to receive such communications from Contractor through Infoblox.

3.5 **Advance Hardware Replacement.** Premium Maintenance Services includes the hardware replacement services set forth in Section 4 below.

3.6 **Error Corrections.** Contractor through Infoblox shall use its reasonable efforts to correct reproducible Errors in the Software in a manner commensurate with the priority of the Error in accordance with the time frames set forth in the table below. Infoblox is not obligated to provide Ordering Activity requested Software features or changes or to correct all Errors. Upon identification of any Error, Ordering Activity shall notify Infoblox of such Error and shall provide Infoblox with sufficient information to reproduce the Error. Error Priorities will be reasonably assigned by Infoblox based on information provided.

Table 1. Premium Maintenance Service Levels

Priority	Definition	Initial Response Target Time	Commitment (Infoblox and Ordering Activity)	Resolution Targets
1	Operation/Service down or critically impacted. No known workaround.	1 hour	Infoblox and customer will commit necessary resources to fix problem or obtain a Workaround.	Emergency bug fix (EBF) if necessary. Fix included in next Update or Upgrade.
2	Operation affected, but not down. Impact may be high. Workaround may be available.	1 hour	Infoblox and customer will commit resources during normal business hours to resolve issue or obtain Workaround.	Fix included in future Update or Upgrade.
3	Moderate to negligible impact. No impact to business.	1 hour	Infoblox and customer will commit necessary resources during normal business hours to restore operation to satisfactory levels.	Schedule for future Update or Upgrade if necessary.
4	Request for information, documentation issues, and enhancement requests.	1 hour	Request-dependent.	Request-dependent.

4. HARDWARE RETURNS

4.1 **Return Material Authorization.** In the event Ordering Activity reasonably believes there is a Product hardware failure, Ordering Activity may contact Infoblox's TSC. If Infoblox's TSC verifies that the Product is likely to be defective and is covered by Support, Contractor through Infoblox will issue an Return Materials Authorization ("RMA") number, which allows the Ordering Activity to return the defective unit to Infoblox for repair or replacement. Before return or replacement of any Product, Ordering Activity must contact Infoblox's TSC and obtain an RMA number.

4.2 **Shipping.** Contractor through Infoblox will not accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with the RMA number to Infoblox. If Ordering Activity ships the Product other than in accordance with Infoblox's instructions, then Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent). Infoblox will provide Ordering Activity with the shipping address and instructions at the time of RMA issuance.

4.3 **Advance Replacement.** Following the issuance of an RMA number for hardware replacement in the United States and Canada, Contractor through Infoblox will use reasonable efforts to ship Ordering Activity a replacement Product unit within 1 business day for RMA requests processed before 3:00 P.M. Pacific Time. Requests for next-day delivery of hardware processed after 3:00 P.M. Pacific Time, ship the following business day for second day delivery in the United States and Canada. For Products outside of the United States and Canada, next business day advance replacement services may be purchased for an additional fee where available; next business day advance replacement is not available in all countries outside of the United States and Canada. All Product units shipped as advance replacements from Infoblox will be shipped at no cost to Ordering Activity and will be comprised of standard or reconditioned components of equal or greater quality, revision level, and/or functionality than the failed Ordering Activity unit. Ordering Activity must promptly deliver the replaced unit to Infoblox. All Products returned for replacement become the property of Infoblox. It is Ordering Activity's responsibility to remove all confidential and proprietary data and information before returning Products to Infoblox.

5. LIMITATIONS/EXCLUSIONS

Contractor through Infoblox shall not be responsible or liable for correcting any Errors not reproducible by Infoblox on the unmodified Software or problems due to: (i) Ordering Activity's failure to implement all Updates and Upgrades issued under this Attachment A; (ii) third party software or systems; (iii) the use or operation of the Software or Product with any other software or in an environment other than as set forth in the Product documentation provided by Infoblox; (iv) changes to the environment that adversely affect the Software; (v) any customizations, alterations, modifications of or additions to the Software other than as provided by Support personnel; (vi) accident, negligence, or misuse of the Product. If Infoblox provides any client software, Support specifically excludes support for use of the client with any third party server. Infoblox will only provide Support for each point release for 18 months after release date.

EXHIBIT B – WARRANTY SERVICES

1. **Email Requests** If Ordering Activity believes an Infoblox product purchased by Ordering Activity is subject to a Material Defect covered by warranty, Ordering Activity may request warranty services via email to Infoblox's Technical Support Center ("TSC"). TSC services are available from 6:00 a.m. to 6:00 p.m. Pacific time, Monday through Friday, excluding Infoblox holidays. Email should be sent to support@infoblox.com. Contractor through Infoblox will use reasonable efforts to respond to requests for support from authorized personnel within one business day. Any telephone services that may be provided by Infoblox hereunder will be limited to that necessary to confirm Material Defects in the applicable Products.
2. **Software Updates** For a period of 90 days after shipment by Infoblox, Contractor through Infoblox shall provide Updates for the Software that are generally released by Infoblox during such period. Warranty Support does not include Upgrades.
3. **Access to Web Support** For a period of 90 days after shipment by Infoblox, Ordering Activity may access the self-service web portal at www.support.infoblox.com for Product installation and configuration assistance.
4. **Replacement/Repair of Product Hardware** For a period of one year after shipment by Infoblox, Contractor through Infoblox shall provide replacement of Infoblox product hardware subject to a Material Defect. In order to obtain the relevant warranty service with respect to Product hardware containing Material Defects, customer shall return such Infoblox Products to Infoblox in accordance with the following RMA procedure. Before return or replacement of any Product, Ordering Activity must contact Infoblox's TSC as described above. If Infoblox's TSC verifies that the Product is likely to be defective and is covered by Warranty Support, Infoblox will issue a Return Materials Authorization ("RMA") number, which allows the Ordering Activity to return the defective unit to Infoblox for repair or replacement. Ordering Activity must deliver the defective Product to Infoblox with the RMA number on the package. Infoblox will not accept any shipment of returned Infoblox Product, which does not have a valid RMA number issued to Ordering Activity pursuant to such RMA procedure. Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent). Infoblox will provide Ordering Activity with the shipping address at the time of RMA issuance. It is Ordering Activity's responsibility to remove all confidential and proprietary data and information before returning Products to Infoblox; Infoblox shall have no obligations or liability with regard to data and information contained in returned Products. In connection with replacement, Infoblox may at its sole discretion modify the replacement unit at no cost to Ordering Activity to improve its reliability or performance.
5. **Definitions** "Material Defect" means (A) with respect to Infoblox product hardware, any reported malfunction, error or other defect that: (i) constitutes a material failure of such hardware to perform in accordance with applicable Specifications, and (B) with respect to software, means (i) can be reproduced by customer and/or Infoblox, and (ii) constitutes a material failure of such software to perform in accordance with applicable Specifications. "Specifications" means the published specifications applicable to the Infoblox products that are in effect as of the date the Infoblox products are shipped to Ordering Activity, as such Specifications may be updated, modified or revised by Infoblox. "Updates" means a Software release, if and when available, consisting of error corrections and patches, in object code form, which is made generally available by Infoblox to its support recipients without additional charge, and is generally indicated by a change in the digit to the right of the release number (e.g., a change from version X.1r2 to X.1r3) and any corrections and updates to the associated documentation. "Upgrades" means a Software release, if and when available, containing new enhancements, features or functionality, in object code form to application software, which is made generally available by Infoblox to its support recipients without additional charge and generally indicated by a change in the feature release number to the right of the decimal point (e.g., a change from version X.2r1 to X.3r1) and the associated documentation.

Intermec Technologies Corporation
6001 36th Avenue West
Everett, WA 98203-1264

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

1. **Scope.** This Rider and the attached **Intermec Technologies Corporation** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

INTERMEC

INTERMEC LICENSE, WARRANTY AND SUPPORT TERMS

1.0 Definitions

- 1.1 "Documentation" means the materials accompanying the Software which describe its functions and how to install and use the Software.
- 1.2 "Intermec" means Intermec Technologies Corporation, and its affiliates..
- 1.3 "Revision" means any correction, modification, update, enhancement, or new version of the Software or Documentation.
- 1.4 "System" and "Devices" means the Intermec computer equipment You acquired and on which the Software was pre-installed or onto which it is to be installed.
- 1.5 "Software" means the computer program(s) acquired and installed on the System or any Revisions thereto. This may include programs written by Intermec as well as operating systems and application programs written by others which have been provided to You or installed on the System. Software will be provided to You in object code form only. The Software includes any disks or media on which it is recorded, any printed Documentation or any "on-line" or electronic Documentation.
- 1.6 "You" or "Your" refers to the Ordering Activity licensed to use the Software under this Attachment A.

2.0 License

- 2.1 Contractor hereby grants You a license to use the Software subject to the following terms and conditions.
- 2.2 The Software is licensed, not sold. Contractor hereby grants You a revocable, non-exclusive, terminable, limited license to use the Software on the System(s) for Your own internal business purposes. No other right or license is granted or implied. You agree not to modify, copy, distribute or otherwise disclose the Software without the prior written consent of Contractor. You further agree not to translate, reverse engineer, disassemble, de-compile, or otherwise attempt to discover the underlying source code of the Software. This license will terminate when You no longer own or You cease to use the System(s) on which You are licensed to use the Software.
- 2.3 You may not duplicate or copy the Software except that You may make a single copy of the Software solely for archival purposes. The archival copy must bear the copyright notices appearing in the original.
- 2.4 You may not sell, lease, rent, assign, sublicense, share, or transfer the Software except that You may transfer all of Your rights under this Attachment A as part of a sale or transfer of the System(s). Such a sale or transfer may only be made if You retain no copies of the Software, You transfer all of the Software (including any media, archival copies, upgrades and Documentation) and the recipient agrees to abide by the terms of this Attachment A. An upgrade may not be transferred unless You transfer all prior versions of the Software. In the event of any such transfer, You will remain liable and responsible to Contractor for the performance of all of Your duties and obligations under this Attachment A.
- 2.5 The Software is protected under the copyright laws of the United States and international copyright treaties, as well as other intellectual property laws and treaties. You acknowledge and agree that nothing in this Attachment A gives You any right, title or interest in the Software except the limited rights expressly granted herein. You acknowledge and agree that some or all of the Software may have been developed by an independent third party software supplier which holds copyright or other proprietary rights to the software product.
- 2.6 You may not remove, intentionally cover or alter any proprietary notices, copyright notices, labels or marks that are contained in or on the Software.
- 2.7 You agree that You will not export or import any portion of the Software to any country that is not party to either: (i) The Berne Convention of 1989, (ii) The Universal Copyright Convention, (iii) The Buenos Aires Convention, or (iv) a treaty with the United States of America (U.S.A.) which allows for the recognition of the property rights claimed by Intermec or its suppliers in the Software.

2.8 You agree to use the Software only in accordance with all applicable laws and regulations, including all applicable privacy laws.

3.0 Warranty

3.1 Contractor provides software on an “as is” basis only.

3.2 CONTRACTOR FURTHER DISCLAIMS THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE. TO THE EXTENT PERMITTED BY LAW, THERE ARE NO WARRANTIES, CONDITIONS OR TERMS, WHETHER EXPRESS OR IMPLIED BY STATUTE, TRADE USAGE OR COURSE OF DEALING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR TITLE. OTHER REPRESENTATIONS OR AFFIRMATIONS OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS REGARDING PERFORMANCE OF THE SOFTWARE NOT CONTAINED IN THIS ATTACHMENT A, WILL NOT BE BINDING ON INTERMEC OR ITS THIRD PARTY SOFTWARE SUPPLIERS.

4.0 Data Charges

4.1 You understand and acknowledge that the use of the Software with mobile devices may result in the transmission of data to and from the mobile device and that such transmission of data to and from your mobile devices could result in additional carrier or service provider charges to You. CONTRACTOR DISCLAIMS ANY LIABILITY FOR AND IS NOT RESPONSIBLE FOR ANY CARRIER OR INTERNET SERVICE PROVIDER DATA COSTS OR CHARGES INCURRED BY YOU IN CONNECTION WITH YOUR USAGE OF THE SOFTWARE.

5.0 Compatibility

5.1 The Software is not compatible with all environments. Contact Intermec for information about hardware and/or software compatibility.

6.0 Support

6.1 Software support may be obtained from www.intermec.com or other location indicated in the Documentation. Contractor through Intermec will be Your primary contact for support even if the Software was written by one of Intermec’s suppliers.

7.0 U.S. Government Acquisition

7.1 This provision applies to all acquisitions of this Software by or for the United States federal government. By accepting delivery of this Software the government hereby agrees that this Software qualifies as “commercial” computer software within the meaning of FAR Part 2.101, DFARS Part 227.7202-1, and DFARS 252.227-7014(a) (June 1995). The terms and conditions of this Attachment A will pertain to the government’s use and disclosure of this Software, and will supersede any conflicting contractual terms or conditions. If this license fails to meet the government’s minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to return this Software unused to Intermec.

EXHIBIT 1 – PRODUCT WARRANTY

Contractor warrants the hardware products to be free from defects in material and workmanship under normal use and service. Contractor’s obligation under this warranty is limited to correcting the defect in the product or any part thereof which is defective in material or workmanship and which within one (1) year from the date of shipment to Ordering Activity is returned to Contractor through Intermec with transportation charges prepaid. Ordering Activity must obtain a Return Material Authorization before the product may be returned. If Contractor determines the product failed due to defects in material or workmanship, Contractor shall repair or replace (at Intermec’s option) the defective product free of charge.

Contractor’s warranty for supplies; including spare parts, printheads, cutter assemblies, media, pre-printed labels and batteries is limited solely to free-of-charge replacement of such supplies within ninety (90) days of shipment to Ordering Activity. Replacement shall be determined by Contractor wherein such supplies fail to meet applicable specifications and were purchased directly from Contractor for use with Intermec products and provided Ordering Activity has complied with the handling, storage and shelf life requirements as specified by Intermec. Contractor shall have no responsibility whatsoever for consumable supplies purchased from any other source.

Contractor provides software on an “as is” basis only.

These warranties do not extend to any defect, fault, or accident, which is caused by improper or inadequate maintenance, installation or use by Ordering Activity or its customers; Ordering Activity’s software, hardware or interfacing; modifications to the product(s) not authorized by Contractor; misuse or misapplication of the product(s) by Ordering Activity or its customers; operation of the product(s) outside environmental or electrical specifications; gross negligence, accident, or disaster.

Contractor shall not warrant and hereby specifically disclaims any express or implied warranty with respect to coverage by Intermec RF (Radio Frequency) products unless Contractor has performed a site survey installed the RF products. Ordering Activity

releases Contractor from any and all liability related to coverage by the RF products if Contractor has not performed the described services.

Any representation or warranty made by any other person, including distributors, resellers, dealers, employees and representatives of Contractor, which are inconsistent or in conflict with or additive to the terms of this Warranty, shall not be binding on Contractor unless reduced to writing and approved in writing by an officer of Contractor.

THE ABOVE WARRANTIES ARE EXCLUSIVE OF, AND IN LIEU OF, ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. NO IMPLIED STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. CONTRACTOR SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY ORDERING ACTIVITY ARISING FROM DELAY IN THE REPLACEMENT OR REPAIR OF PRODUCTS UNDER THE ABOVE WARRANTY.

EXHIBIT 2 – MAINTENANCE SERVICES

MEDALLION STANDARD

Medallion *Standard* services are optional upgrades from the Intermec Standard Warranty that provide additional coverage for hardware failure and general wear and tear. Four levels of service are available to best suit your requirements covering both return to depot repair and on-site response offerings.

Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of up to 3 years from the initial hardware purchase. Extended coverage is also available for up to 3 years from the production end of build of the model. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware components and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;
- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this service available 5 days/week, 8 hours/day – excluding public and local holidays;
- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - A return to depot repair service with three levels of turnaround;
 - Covers: parts, labor, and return freight;
 - Preventative maintenance is performed on the unit, where appropriate;
 - Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.
- For Medallion Standard – *Gold and Platinum*:
 - An on-site service with two levels of response;
 - Covers parts and labor (excluding print heads);
 - Devices are diagnosed and repaired on the customers' premises.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products not covered by a valid Intermec service contract;
- Cost of carriage to an Intermec facility (Bronze & Silver only);
- Styluses, battery door covers, screen protectors, hand straps and clips;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries;
- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the customer;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment damaged during use for purposes other than for which the Equipment was designed;
- Equipment that has been damaged due to inadequate customer-provided transit packaging;
- Damage sustained due to negligence or abuse;
- Damage caused by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;

- Medallion® Standard -- *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement with a customer-owned, Intermec managed device;
- Medallion® Standard – *Gold* is an On-site service with a two business day response;
- Medallion® Standard – *Platinum* is an On-site service with a next business day response.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:
 - Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.
- Once you have completed the RMA request, you will be issued with an RMA number.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - The address to return the faulty device(s) to will be provided during the RMA process;
 - Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.
- For Medallion Standard – *Gold and Platinum*:
 - A technician will be dispatched to arrive within the contracted timescale;
 - Service requests placed after 3pm local time, Monday to Friday will be deemed as having been placed on the next working day.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the Ordering Activity without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the RMA process outlined above;
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;
- Acknowledge responsibility for recovering your own application software after any Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.
- For Medallion Standard – *Bronze, Silver and Silver Replacement*:
 - Return the faulty product to the addressed provided with the RMA Intermec in a timely manner;
 - Remove any replaceable items (SIM cards, SD cards, batteries etc).
- For Medallion Standard – *Gold and Platinum*:
 - Provide Intermec with full, safe and prompt access to the products;
 - Ensure the product is in an easily accessible location with adequate space, health and safety conditions;
 - Provide such telecommunication facilities as are reasonably required by Intermec for the performance of its obligations and for any other testing, diagnostic and remedial purposes at the Ordering Activity's expense.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

MEDALLION SELECT

Intermec Medallion Select is a return to depot repair service covering hardware failure and limited accidental damage.

Upon receipt of the faulty product, Contractor through Intermec trained staff will try to replicate the fault to effect the repair. The product will then be repaired using genuine Intermec parts and a full functional test is performed on the unit, before being cleaned, re-packed and returned within contracted turnaround time.

Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of up to 3 years from the initial hardware purchase. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware products and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;

- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this Service available 5 days/week, 8 hours/day – excluding public and local holidays;
- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this Service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear or limited accidental damage sustained to screens, keypads, buttons and plastics. Covers the labor and the expedited repair or replacement of parts;
- Replacement of damaged styluses, battery door covers, screen protectors, hand straps or clips that are included with Equipment sent to the depot for repair;
- Preventative maintenance is performed on the unit, where appropriate;
- Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products outside of their normal contract term;
- Devices that are beyond economical repair;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries
- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the Ordering Activity;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment that has been damaged due to inadequate Ordering Activity-provided transit packaging;
- Damage sustained due to chronic negligence or deliberate abuse;
- Equipment damaged by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

Medallion Select offers a return to depot repair and dispatch service on a best endeavours basis. Turnaround time is calculated as the time the faulty unit is in the Intermec Repair Center. Contracts are available providing three contracted turnaround times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement of customer-owned, Intermec managed device.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:
 - Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.
- Once you have completed the RMA request, you will be issued with an RMA number and the address to return the faulty device(s) to.
- Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the customer without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the process outlined above;
- Return the faulty product to the address provided with the Intermec RMA in a timely manner;
- Remove any replaceable items (SIM cards, SD cards, batteries etc);
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;

- Acknowledge that they are responsible for recovering their own application software after any such Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

MEDALLION COMPLETE

Intermec Medallion Complete service is a return to depot repair service covering hardware failure and accidental damage.

Upon receipt of the faulty product, Contractor through Intermec trained staff will try to replicate the fault to effect the repair. The product will then be repaired using genuine Intermec parts and a full functional test is performed on the unit, before being cleaned, re-packed and returned within contracted turnaround time.

Service Overview:

Contractor through Intermec provides a standard repair service for its branded hardware products for a period of 3 or 5 years from the initial hardware purchase (contract must be purchased within 30 days of the hardware sale). Extended coverage is also available for up to 3 years from the production end of build of the model. This service provides the repair or replacement (at Intermec's discretion) of faulty hardware products and includes:

- Access 24 hours/day, 7 days/week to Intermec's information and support tool. *Knowledge Central* is available at <http://intermec.custhelp.com>;
- Level 1 telephone support from one of our support technicians for troubleshooting assistance of hardware, software and installation issues. Contractor through Intermec will use commercially reasonable efforts to keep telephone support for this Service available 5 days/week, 8 hours/day – excluding public and local holidays;
- Case management to help track resolution and escalation of issues;
- Escalation management to provide a single point of contact for incident management, escalation and status of incidents within the scope of this Service;
- Repair or replacement (at Intermec's discretion) of faulty product, for faults caused by hardware failure due to reasonable wear and tear or accidental damage sustained to screens, keypads, buttons and plastics. Covers the labor and the expedited repair or replacement of parts;
- Replacement of damaged styluses, battery door covers, screen protectors, hand straps or clips that are included with Equipment sent to the depot for repair;
- Preventative maintenance is performed on the unit, where appropriate;
- Devices are subject to a full functional test before being cleaned, re-packed and dispatched back to the supplied return address.

Service Exclusions:

Without limitation, this service does not include:

- Intermec products outside of their normal contract term;
- Ordering Activity replaceable spare parts including: cutter assemblies, print heads, media, pre-printed labels and batteries;
- Software re-installation, unless the repair requires a factory reset or software install to the latest factory version and this is not excluded within the terms of the contract with the customer;
- Components that are no longer available for purchase on a commercially reasonable basis;
- Equipment damaged to the extent that the Equipment serial number is no longer verifiable;
- Equipment that has been damaged due to inadequate Ordering Activity-provided transit packaging;
- Damage sustained due to chronic negligence or deliberate abuse;
- Damage caused by a force majeure event;
- Equipment damaged by exposure beyond the Equipment's specified moisture, wind, dust, pressure, shock, temperature or over-voltage ratings.

Turnaround Times:

Medallion Complete offers a return to base depot and dispatch service on a best endeavours basis. Turnaround time is calculated as the time the faulty unit is in the Intermec Repair Center. Contracts are available providing three contracted turnaround times:

- Medallion® Standard – *Bronze* is a Return to depot 5 business day repair performed at an Intermec Repair Center;
- Medallion® Standard – *Silver* is a Return to depot 2 business day repair performed at an Intermec Repair Center;
- Medallion® Standard -- *Silver Replacement* is a return to depot 5 business day repair performed at an Intermec Repair Center, providing next business day replacement of customer-owned, Intermec managed device.

Support Procedures:

- For 24 x 7 support information, answers to common questions, or to request technical support, please visit our on-line Knowledge Central at <http://intermec.custhelp.com>;
- For all service requests, please visit <http://webapps.intermec.com/RMARequest/>
- To request a Service Repair you will need the following details:

- Product Code;
 - Serial Number;
 - Fault Description;
 - Contract Number (if applicable);
 - Return to Address;
 - Contact Name;
 - Telephone number.
- Once you have completed the RMA request, you will be issued with an RMA number and the address to return the faulty device(s) to.
 - Please print the shipping document and return your product to the address detailed on the RMA, ensuring a copy of the RMA shipping document is clearly visible.

Ordering Activity Responsibilities:

In order to enable Contractor through Intermec to carry out its support obligations the Ordering Activity without limitation should:

- Check the Intermec on-line Knowledge Central for initial diagnosis and support actions;
- If a repair is required, request a Repair Authorization number using the process outlined above;
- Return the faulty product to the address provided with the RMA Intermec in a timely manner;
- Remove any replaceable items (SIM cards, SD cards, batteries etc);
- Where possible, provide a technically competent person with knowledge of the system and fault to actively assist in troubleshooting and diagnosis;
- Acknowledge that they are responsible for recovering their own application software after any such Services have been provided;
- Any other actions that Intermec may reasonably request in order to best perform the service.

Additional Information:

- All repair work and any parts used are supplied with a 90-day warranty valid from the date of repair.

Juniper Networks (US), Inc.
1194 N. Mathilda Avenue
Sunnyvale, CA 94089-1206

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

1. **Scope.** This Rider and the attached **Juniper Networks (US), 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**

JUNIPER NETWORKS, INC.

JUNIPER NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **Definitions.** In this Attachment A and in the Entitlements (unless the Entitlement otherwise expressly provides), the following capitalized terms shall have the meaning set forth below:
 - a. "Authorized Users" means the number of Users that Ordering Activity is licensed to have access to the Software.
 - b. "Concurrent Users" means the number of Users that Ordering Activity is licensed to have concurrently accessing the Software. If a single User connects to Software using multiple concurrent log-ins or connections, each such active logical connection or log-in is counted toward the number of Concurrent Users.
 - c. "Ordering Activity" or "You" means the individual or other legal entity or other business, governmental or not-for-profit organization that (A) is the original end user purchaser of a license to the Software from Juniper or a Juniper-authorized reseller, (B) accepts the terms of this Attachment A, and (C) is identified as Ordering Activity or end user in the applicable Entitlement or in the authorized reseller's invoice for such license to the Software. If Software is lawfully received from Juniper or from an authorized reseller but there is no Entitlement, then "Ordering Activity" means the party that first so received the software from Juniper or its authorized reseller and accepts the terms of this Attachment A. (See Section 2.j, below, with respect to license limitations where there is no Entitlement.)
 - d. "Device" means any device such as a computer, handset, tablet, laptop, server, switch or router. A Device may also be a physical or virtual machine, hardware partition or blade.
 - e. "Embedded Software" means a copy of operating system software delivered embedded in or loaded onto Juniper hardware equipment when such equipment is sold by Juniper; PROVIDED, however, that no Separately Licensable Feature incorporated in such Embedded Software shall itself be deemed licensed along with the Embedded Software unless an Entitlement expressly so provides. If the Ordering Activity has an Entitlement to an Update of such Embedded Software, then such Update is itself deemed "Embedded Software" to the extent such Update would be deemed Embedded Software without regard to this sentence had it been delivered installed on the Juniper equipment.
 - f. "End-point" means any Device that terminates a network connection.
 - g. "Entitlement" means the set of documents issued by (or under authority granted by) Juniper that specify (i) the Software licensed (by Juniper product number), (ii) the license term, (iii) the Licensed Units, (iv) the authorized use, if any, (v) the Ordering Activity, and (vi) the GSA license fee charged, if any, and, if none is charged, the fact that the license was granted to Ordering Activity free-of-charge.
 - i. By way of illustration, "Entitlements" may be composed of, among other things, any of the following or combinations of the following, as long as together they meet the criteria of the preceding sentence: written agreement signed by Ordering Activity and Contractor, a product description in the Contractor GSA price list, a Contractor invoice, a Juniper-issued e-certificate, a Juniper-issued email transmitting authorization codes, as to Updates, or a Juniper website-posted Services Description Document.
 - h. "Juniper" means Juniper Networks (U.S.), Inc. and/or its authorized service representative(s) if Ordering Activity has acquired its license rights to the Software for use in North America, Central America or South America.
 - i. "Licensed Unit" means a unit of measure by which Ordering Activity's licensed use of Software is limited, as specified in the Entitlement. Examples of Licensed Units include, but are not limited to, seats, users, sessions, calls, connections, subscribers, clusters, nodes, devices, links, ports, events or transactions. Licensed Units may also be based on throughput (such as gigabytes per second), performance, configuration, bandwidth, interfaces, processing, or geographic scope. Some Licensed Units are defined in this Section 1 and those definitions shall apply to all Entitlements except as otherwise expressly provided in such Entitlements. Such defined Licensed Units include: Authorized Users, Concurrent Users, Device, End-point, Managed Device, Subscriber, and User.

- j. "Managed Device" is a Device that (1) is recognized by the Software as authorized to be configured, administered, managed, provisioned, monitored or otherwise acted upon by the Software or (2) has been configured, administered, managed, provisioned, monitored or otherwise acted upon by the Software.
 - k. "Network" means a set of networked Devices or other network elements of the Ordering Activity that are under the common management and operational control of Ordering Activity, and in the case of an internet service provider are located within a single country unless Ordering Activity's Entitlement otherwise expressly provides.
 - l. "Separately Licensable Feature" means any module, feature, function, service, application, operation, or capability furnished in combination within other Software (herein, collectively, "feature"), which feature is separately licensable from Juniper or its authorized resellers for additional fee based upon then-current GSA price list, whether such feature is 'locked' or key-restricted or even of the feature can be activated or used without a Juniper-issued product activation key.
 - m. "Software" means an instance of a program, module, feature, function, service, application, operation, or capability of the Juniper or Juniper-supplied software either (i) identified in an Entitlement as licensed to Ordering Activity or (ii) made available to Ordering Activity by Juniper or a Juniper-authorized reseller for Evaluation Use. "Software" may also consist of an instance either of a Separately Licensable Feature distributed in combination with other Software and or of an Update of other Software.
 - n. "Subscriber" is a Device, individual, Ordering Activity billing record or other identity that is recognized by the Software as authorized (presently, in the past or in the future) to receive services, usage, access or content which were, are or could be provided, managed, distributed, provisioned, billed or otherwise enabled by the Software.
 - o. "Subscription License" means a license to Software with respect to which the Entitlement states a finite, fixed term of use for the Software and either identifies the license as a "subscription" or expressly includes the right to Updates throughout the fixed term of use without need to purchase a separate Support Contract.
 - p. "Support Contract" means a support services contract that includes rights to receive certain Updates of the Software, which contract is either (i) a Juniper-issued contract purchased by Ordering Activity either from Juniper or from a Juniper-authorized reseller, or (ii) a support services contract issued by a support services provider to Ordering Activity under authorization granted by Juniper.
 - q. "Update" means Software that is an update, upgrade, bug fix or other new releases of other Software. Updates are either "Major Releases" (meaning a revision of Software as determined by Juniper Networks to have significant additional functionality or improved performance) or "Minor Releases" (meaning a bug fix, maintenance release, service release or a revision of a software application as determined by Juniper Networks to be limited to minor additional functionality or corrections of errors). An Entitlement to Updates may for certain cases exclude Major Releases.
 - r. "Usage Monitor" means a network management appliance or application software furnished to Ordering Activity (or approved in writing) by Juniper for monitoring use of the Software.
 - s. "User" means Device, individual, Ordering Activity billing record or other identity usable to gain access to any Software functionality (whether or not such account is restricted to a particular Device). User may be an individual or another Device. In counting Users for purposes of measuring usage against the licensed number of "Authorized Users" or "Concurrent Users," if a User can access the Software through another User each such User shall be counted separately,
2. License Grant. Subject to payment of the applicable GSA fees and subject to the terms of this Attachment A, Contractor grants to Ordering Activity a non-exclusive and non-transferable license, without right to sublicense, to use the Software, in executable form only, and only within the restrictions and subject to the conditions set forth in the Entitlement and those set forth in this Attachment A. Unless otherwise expressly provided in the Entitlement:
- a. **Embedded Software.** Ordering Activity shall use Embedded Software solely for execution on the unit of Juniper equipment originally delivered to Ordering Activity with such Software installed. Any Update of such Embedded Software that Ordering Activity has licensed under a Support Contract may be loaded and executed only on the Juniper equipment on which the originally licensed Embedded Software is authorized to execute. Further, if Ordering Activity also licenses any Separately Licensable Feature combined with or incorporated in the Embedded Software (whether in dormant or active form), Ordering Activity may use such Separately Licensable Feature only for execution on the Juniper equipment on which the Embedded Software is authorized to execute. The license term for any such Separately Licensable Feature or Update shall be as specified in its own Entitlement. Notwithstanding any other provision of this Attachment A, except as may otherwise be required by applicable law, no license is granted for installation or use of any Embedded Software or associated Update or Separately Licensable Feature on any Juniper equipment resold by anyone who is not an authorized reseller of such equipment.
 - b. **Single Instance/Single Device.** Except to the extent otherwise explicitly stated in the Entitlement (including, without limitation, where the Entitlement states that the license is a "Network License") Ordering Activity shall use a single instance of the Software on a single Device and the quantity of all applicable Licensed Units shall be one (1).

- c. **Non-transferability of Licensed Units.** Unless expressly permitted by the Entitlement, quantities of Licensed Units purchased separately are not allowed to be transferred or allocated between or among different licenses or instances of the Software.
- d. **Separately Licensable Features and Updates.** Unless otherwise expressly stated in an Entitlement purchased by Ordering Activity, a license to a particular release of Software shall not entitle Ordering Activity to receive or use any Separately Licensable Feature delivered in combination with that Software or any Update of that Software.
- e. **Network License.** If the Entitlement specifies that it is a Network License, Ordering Activity may allocate the applicable Licensed Units across the licensed number of Software instances provided that (i) such instances are all running on the Ordering Activity Network specified in Ordering Activity's Entitlement; (ii) the total number of Licensed Units does not exceed the number licensed under that Entitlement and (iii) a Usage Monitor is used to validate (i) and (ii) and to report such usage to Juniper. Ordering Activity shall not alter or disable the Usage Monitor at any time during the term of the network license and shall not disable, alter or destroy the Usage Monitor, its connection to Juniper or any data collected by such Usage Monitor. If the network license is granted as to a particular number of Licensed Units, then all licensed copies of the software in the Ordering Activity Network may not be used to support in the aggregate more than that number of Licensed Units.
- f. **Updates.** Except as expressly provided below in Section 2.f, below, with respect to Subscription Licenses or as otherwise expressly provided in an Entitlement or Support Contract, Ordering Activity shall have no rights in any Update to Software, nor any rights to support services associated with such Software.
- g. **Subscription License.** In case of a Subscription License of Software, Contractor through Juniper Networks shall make available to Ordering Activity during the term of the Subscription License the Supported Updates (as defined below) solely for support of the Ordering Activity's licensed copy(ies) of such Software during the term of the Subscription License, subject to the terms and conditions set forth below:
 - i. As used herein, "Supported Updates" as of any particular time during the term of the Subscription License means any Update of such Software then available generally to Ordering Activities who have purchased a Subscription License to such Software.
 - ii. **Rights in Supported Updates.** For each Supported Update, the Ordering Activity's rights in such Update will be subject to the same terms, restrictions and conditions as apply to the Software (including without limitation the terms, restrictions or conditions on use set forth in this Attachment A and in any "Entitlement" as it applies to the Software).
- h. **Specific license terms applicable to particular products:**
 - i. **Junos Space Software.** If this license is granted in fulfillment of a Ordering Activity purchase order (or associated fulfillment documentation) placed with Contractor or any Contractor-authorized reseller or support services provider (including any Operate Specialist) for any package of Junos Space Software, then Ordering Activity is authorized to use Junos Space in a networked environment on the Ordering Activity Network identified in the Entitlement solely to manage Devices in such Ordering Activity Network, but only to the extent of Licensed Units specified in the Entitlement. If, instead, Ordering Activity's license in a package of Junos Space Software is granted in fulfillment of a feature of a Support Contract, the scope of the license shall be as set forth in that Support Contract, an associated Service Description Document or another associated Entitlement.
 - ii. **Steel-Belted Radius or Odyssey Access Client Software –** Ordering Activity shall use such Software on a single computer containing a single physical random access memory space and containing any number of processors. Use of the Steel-Belted Radius or IMS AAA Software on multiple computers or virtual machines (e.g., Solaris zones) requires multiple licenses, regardless of whether such computers or virtualizations are physically contained on a single chassis.
 - 1. The Global Enterprise Edition of the Steel-Belted Radius Software may be used by Ordering Activity only to manage access to Ordering Activity's enterprise network. Specifically, service-provider Ordering Activities are expressly prohibited from using the Global Enterprise Edition of the Steel-Belted Radius Software to support any commercial network access services.
- i. If the Entitlement specifies "Research and Development Use", then Ordering Activity may only use the Software in Ordering Activity's own internal lab activities for research and development, excluding (A) research and development activities conducted as a paid contractor on behalf of a third party, and (B) any use of Software supporting, or installed or incorporated in whole or in part in, a product or service made commercially available or supporting live network traffic in the ordinary course of Ordering Activity's business.
- j. If the Entitlement specifies "Lab Use", then Ordering Activity may only use the Software in Ordering Activity's own internal lab activities to evaluate and test network setup and configuration and feature testing, but excluding (A) lab testing or other activities conducted as a paid contractor on behalf of a third party, and (B) any use of Software supporting, or installed or incorporated in whole or in part in, a product or service made commercially available or supporting live network traffic in the ordinary course of Ordering Activity's business.

- k. If there is no Entitlement, or if there is an Entitlement that specifies "Evaluation", "Demonstration" or "Trial" use then Ordering Activity may only use the Software for its internal evaluation or qualification of the Software (or the equipment in which it is embedded) and only in a development or test network environment in contemplation of potential future licensing for a commercial or other use.
- l. Except to the extent otherwise required by applicable law or expressly provided in the Entitlement, this license is not sublicensable, transferable or assignable by Ordering Activity and any attempted sublicense, transfer or assignment shall be null and void.
3. Use Prohibitions. Notwithstanding the foregoing, this license does not permit the Ordering Activity to, and Ordering Activity agrees that it shall not, alone or through another party: (a) modify, unbundle, reverse engineer, or create derivative works based on the Software; (b) make copies of the Software (except as necessary for backup purposes and as otherwise expressly permitted in the Entitlement); (c) remove any proprietary notices, labels, or marks on or in the Software; (d) distribute any copy of the Software to any third party, including Embedded Software in Juniper equipment sold in any secondhand market; (e) use any feature, function, service, application, operation, or capability embedded within Software (herein, collectively, "feature") where such feature is 'locked,' key-restricted or otherwise identified as not licensed for use without paying a separate fee, unless Ordering Activity first purchases the applicable license(s) and obtains a valid authorization from Juniper supported by an Entitlement explicitly authorizing such feature; this prohibition applies even if the feature can be activated or used without a Juniper-issued product activation key; (f) distribute any product activation key for the Software provided by Juniper to any third party; (g) use the Software in any manner that extends or is broader than the uses purchased by Ordering Activity from Contractor or an authorized Contractor reseller; (h) use Embedded Software on non-Juniper equipment; (i) use Embedded Software (or make it available for use) on Juniper equipment that the Ordering Activity did not originally purchase from Contractor or an authorized Contractor reseller; (j) disclose the results of testing or benchmarking of the Software to any third party without the prior written consent of Juniper; (k) attempt to alter or deface any notice or marking on any copy of the Software or attempt to assign or transfer any rights (whether by contract, by operation of law or otherwise) under this Attachment A or under any Entitlement; (l) use any Update to which Ordering Activity may otherwise be entitled if either (1) at the time of acquiring such Update, Ordering Activity does not already hold a valid license to the original Software or (2) Ordering Activity has not paid the applicable GSA fee for the Update (or the Support Contract under which the Update is furnished); (m) deactivate or modify or impair the functioning of any Usage Monitor or any record, log or functionality designed to monitor, measure or limit use of the Software or compliance with the license terms of this Attachment A; (n) unless otherwise expressly provided in the Entitlement, permit any other User to use its access to any Software features or functionality in support of any business activity in which such other User for a fee grants third parties access to such features or functionality; or (o) use the Software or permit any User or any other third party to use the Software in violation of any applicable law or regulation or to support any illegal activity.
4. Ownership. Contractor and Contractor's licensors, respectively, retain ownership of all right, title, and interest (including copyright) in and to the Software, associated documentation, and all copies of the Software. Nothing in this Attachment A constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software or associated documentation.
5. Limited Warranty. Except as may otherwise be provided in the warranty posted in Exhibit A herein applicable to the Software, and except for Software excluded from warranty coverage under subsection (f), below, Contractor warrants for the sole benefit of Ordering Activity that for a period of ninety (90) days from the Start Date, the media on which software is delivered, shall be free from defects in material and workmanship under normal authorized use consistent with the product instructions, subject to the following:
- a. In addition, with respect to Embedded Software embedded in Juniper security products, application acceleration products or certain other Hardware products, as more specifically set forth in Exhibit A herein, for a period of fifteen (15) days from the date a Ordering Activity receives such Hardware product Contractor will provide the Ordering Activity that purchased such Hardware product access to one (1) download of the most recent commercially-available revision of Software that is embedded in such hardware product. Ordering Activity may download the Software by going to <http://www.juniper.net/support>. Such download shall be treated as though it were an Update for purposes of this Attachment A. This right to download extends only to the Ordering Activity and not to any subsequent transferee of the Hardware product on which it is embedded;
- b. In any event, THE REMEDY OF THE ORDERING ACTIVITY AND THE LIABILITY OF CONTRACTOR UNDER THIS LIMITED WARRANTY SHALL BE THE REPLACEMENT OF THE MEDIA CONTAINING THE SOFTWARE.
- c. Restrictions: No warranty will apply if the Software (i) has been altered, except by Contractor through Juniper Networks; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Juniper; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed solely for Evaluation Use or demonstration use or is beta software or otherwise not commercially released. In addition, Software is 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) operating life-support or life-critical medical equipment, and Contractor disclaims any express or implied warranty of fitness for such uses. Ordering Activity is solely responsible for backing up its programs and data to protect against loss or corruption. Contractor warranty obligations do not include installation, reinstallation or backup support.

- d. IN NO EVENT DOES CONTRACTOR WARRANT THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.
- e. Nothing in this Attachment A shall give rise to any obligation on the part of Contractor to support the Software. Support services may be purchased separately. Any such support shall be governed by a separate, written support services agreement.
- f. Exclusions: Software licensed for research and development use, lab use, evaluation use or demonstration use, shall be furnished "AS IS" and without warranty of any kind, expressly or implied.
- g. Disclaimer of implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, TO THE EXTENT PERMITTED BY LAW CONTRACTOR DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. 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 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 fails of its essential purpose.

EXHIBIT A – STANDARD PRODUCT WARRANTY POLICY

Warranty Start Date:

"Start Date" as used in this policy means (i) the date this product is shipped from the manufacturing facilities of Juniper Networks, Inc. ("Juniper Networks"), or (ii) in the case of resale by an authorized Juniper Networks reseller, the date not more than ninety (90) days after original shipment of this product by Juniper Networks.

Limited Hardware Warranty:

Contractor warrants that for a period of one (1) year from the Start Date, the Juniper Networks hardware purchased by Ordering Activity ("Hardware") shall be free of defects in material and workmanship under normal authorized use consistent with the product instructions. This product warranty extends only to the original purchaser. In the event that Contractor receives notice during the warranty period that any Hardware does not conform to its warranty, Ordering Activity's remedy, and Contractor's liability, shall be for Contractor, at its sole option, to either repair or replace the non-conforming Hardware in accordance with this limited warranty. Hardware replaced under the terms of any such warranty may be refurbished or new equipment substituted at the option of Contractor. Contractor will use commercially reasonable efforts to ship the replacement Hardware within twenty (20) business days after receipt of the product at a Juniper Networks Repair Center. Actual delivery times may vary depending on the Ordering Activity's location.

Limited 90-day Software Media Warranty:

Contractor warrants that for a period of ninety (90) days from the Start Date, the media, on which the software embedded in the Hardware ("Software") is recorded, shall be free from defects in material and workmanship under normal authorized use consistent with the product instructions. The remedy of the Ordering Activity and the liability of Contractor under this limited warranty shall be the replacement of the media containing the Software. In addition, with respect to Software embedded in Juniper Networks security products, application acceleration products or certain other Hardware products, as more specifically set forth on <http://www.juniper.net/support> for a period of fifteen (15) days from the date a Ordering Activity receives such Hardware product, Contractor will provide the Ordering Activity that purchased such Hardware product access to one (1) download of the most recent commercially-available version of Software that is embedded in such product. Ordering Activity may download the Software by going to <http://www.juniper.net/support>. This right to download extends only to the original purchaser.

Restrictions:

No warranty will apply if the Hardware or Software (i) has been altered, except by Contractor through Juniper Networks; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Juniper Networks in the enclosed documentation; or (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident. In addition, Hardware or Software is 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) operating life-support or life-critical medical equipment, and Contractor disclaims any express or implied warranty of fitness for such uses. Ordering Activity is solely responsible for backing up its programs and data to protect against loss or corruption. Ordering Activity warranty obligations do not include installation support.

Dead on Arrival ("DOA"):

For up to thirty (30) days from the Start Date, Contractor will provide expedited replacement of affected field replaceable units of Hardware that fail to operate within twenty-four (24) hours of initial installation. For purposes of this DOA policy, "fail to operate" shall mean a material failure to substantially perform in accordance with the Hardware's technical specifications and shall not include cosmetic or other deficiencies that do not materially affect Hardware performance. A new field replaceable unit will be shipped from a Juniper Networks' manufacturing facility within two (2) business days of Contractor's receipt and validation of Ordering Activity's notification of an inoperative unit. Notification must be sent by Ordering Activity via online procedures set forth below. Defective Hardware must be returned within thirty (30) days of failure, or Ordering Activity pays purchase price of replacement Hardware.

Hardware Return Procedures:

Any defective item can only be returned if it references a return material authorization (“RMA”) number issued by authorized Juniper Networks service personnel. To request an RMA number, Ordering Activity must contact Juniper Networks Technical Assistance Center (“JTAC”) via the online resource available at the URL: <http://www.juniper.net/support>. JTAC will only assist Ordering Activities with online RMA processing pursuant to the terms of this warranty and will not provide any troubleshooting, configuration or installation assistance. Telephone calls to JTAC will not be accepted unless the Ordering Activity has purchased a valid Juniper Networks service contract that is in effect as of the time of the call. The RMA number must be included on the outside carton label of the returned item.. Contractor through Juniper Networks shall pay any transportation costs incurred with the redelivery of a repaired or replaced item. If, however, Juniper Networks reasonably determines that the item is functional, the Ordering Activity shall pay any transportation cost. If Juniper Networks determines, at its sole discretion, that the allegedly defective item is not covered by the terms of the warranty provided hereunder or that a warranty claim is made after the warranty period, the cost of repair by Juniper Networks, including all shipping expenses, shall be paid by Ordering Activity.

Disclaimer:

EXCEPT AS EXPRESSLY SET FORTH ABOVE, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, OR WARRANTIES OR OBLIGATIONS ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHER, ORDERING ACTIVITY DOES NOT WARRANT THAT THE SOFTWARE IS ERROR FREE OR THAT ORDERING ACTIVITY WILL BE ABLE TO OPERATE THE SOFTWARE WITHOUT PROBLEMS OR INTERRUPTION.

EXHIBIT B – JUNIPER CARE AND JUNIPER CARE PLUS

1. Definitions: In this Attachment A, the following definitions shall apply:

- a) “Advance Hardware Replacement Support Plan” means an advance hardware replacement support plan as described herein that has been purchased by Ordering Activity.
- b) “Attachment A” means (1) these Support Terms and Conditions.
- c) “Authorized Reseller” means an authorized reseller of Juniper Networks products, so authorized in exchange for its agreement to resell only such Juniper Networks product that it has purchased either directly from Juniper Networks or from a Juniper Networks-authorized distributor.
- d) “Business Day” in connection with a particular JTAC facility, Service Manager or other Juniper Networks resource supporting Juniper Networks Services means Monday through Friday, 8:00 a.m. to 5:00 p.m., in the time zone where such resource is located, excluding local holidays.
- e) “CSC” means Juniper Networks’ Customer Support Center. The CSC is a web-based service that allows Operate Specialist to access a database of Software Releases, technical tools, frequently asked questions, Documentation, technical updates, Product information, pre-released Product information, bug reporting, and bug resolution. The CSC is available at the URL: <http://www.juniper.net/support>.
- f) “Documentation” means operating manuals, user instructions, technical literature and other written materials ordinarily provided by Juniper Networks with Product or Services.
- g) “Ordering Activity” means the person or organization that originally purchases, leases or licenses Product and Services from Juniper Networks or an Authorized Reseller for use in such person’s or organization’s own business operations and not for further distribution or sale.
- h) “Hardware” means tangible systems, assemblies, components, accessories and like tangible goods that Juniper Networks has released for sale and spare parts therefor available from Juniper Networks for use in repairing or replacing Hardware that is defective.
- i) “JTAC” means Juniper Networks’ local Technical Assistance Center in the applicable geographic region.
- j) “Juniper Networks” means: Juniper Networks (U.S.), Inc. and/or its authorized service representative(s) if Services will be provided in North America, Central America or South America.
- k) “Juniper Networks Services” means services purchasable by Ordering Activity from Juniper Networks or its Authorized Reseller and to be rendered by Juniper Networks for Ordering Activity.
- l) “Problem Resolution” means a resolution to a Problem that (i) causes Software and/or Hardware to substantially conform with the relevant Documentation; and/or, (ii) restores the service and operation of the Product without a material loss of functionality. Any Problem Resolution required hereunder will be delivered in Juniper Networks’ next regularly scheduled major Supported Release.
- m) “Priority 1 Problem” means any fault in a supported Product that causes a catastrophic impact to an Ordering Activity’s mission critical functionality. Examples of Priority 1 Problems include issues that cause the total loss or continuous

instability of mission critical functionality such as the complete failure of an Ordering Activity's production network or system.

- n) "**Priority 2 Problem**" means any fault in a supported Product that causes a significant impact to an Ordering Activity's mission critical functionality. Examples of Priority 2 Problems include issues that are significantly impairing, but do not cause a total loss of mission critical functionality or intermittent issues that significantly affect mission critical functionality.
- o) "**Priority 3 Problem**" means any fault in a supported Product that causes minimal performance impact to business operations. Examples of Priority 3 Problems include issues in Products that do not impact mission critical functionality, non-repeated issues that temporarily impacted mission critical functionality but have since recovered, issues seen in a test or pre-production environment that would normally cause significant adverse impact to a Product, or work-around in place for Priority 1 or Priority 2 issues.
- p) "**Priority 4 Problem**" means any non-conformance to Documentation that has no impact on business operations. Examples of Priority 4 Problems include information requests, standard questions on configuration or functionality of Products, non-urgent RMA requests or cosmetic defects.
- q) "**Problem**" means a Priority 1 Problem, Priority 2 Problem, Priority 3 Problem, or Priority 4 Problem.
- r) "**Problem Report**" means a description of the Problem encountered when Ordering Activity submits a request to Juniper Networks for technical support. Each Problem Report will include a description of how to replicate the condition that brought about the Problem whenever possible, all available diagnostic information, and a priority level as mutually determined by Ordering Activity and Juniper Networks consistent with the Problem priority levels defined herein. Ordering Activity shall submit Problems Reports consistent with the Problem Report template which can be found in the JTAC User Guide at URL <https://www.juniper.net/customers/support/downloads/710059.pdf>.
- s) "**Product(s)**" means the Juniper Networks Hardware, Software and Documentation, or any part thereof, that is covered under valid and active Juniper Networks Care Service Contract purchased by Ordering Activity from Contractor.
- t) "**SDD**" means a Services Description Document posted at <http://www.juniper.net/support/guidelines.html> and referencing this Exhibit B of this Attachment A as governing terms for the services described therein.
- u) "**Service Contract**" or "**Juniper Networks Service Contract**" means any bundle of Juniper Networks Services purchasable by Ordering Activity which services bundles are described in the Services Offerings for Ordering Activities Website that are offered by Juniper Networks to Ordering Activities for the applicable Services Contract term, but excluding Resident Engineering, Resident Consultant or other on-site professional services, which are covered under separate services terms and conditions. As described in applicable SDD's, a Services Contract may also include a license of Software for the Services Contract term; provided that any such Software is subject to the terms of this Attachment A.
- v) "**Site**" means the Ordering Activity physical location where the Hardware is installed.
- w) "**Software**" means the machine-readable object code licensed and delivered by Juniper Networks to Ordering Activity, either directly or through Juniper Networks' Authorized Resellers, whether embedded in the Hardware or delivered separately, and includes Software Releases.
- x) "**Software Release**" means a new production release of Software made generally available by Juniper Networks for use by Ordering Activity.
- y) "**Supported Release**" at any time means any Software Release then still supported under Juniper Networks' then-current software EOL and EOS Notification Policy and Procedures (<http://www.juniper.net/support/eol/#software>); PROVIDED HOWEVER, that for Perpetual License Software (as defined in the SDD for Care Support services) licensed to a particular Ordering Activity, Supported Release excludes "Major Releases" (as defined in that same SDD) released after the Major Release that is deliverable with the underlying perpetual license purchased by the Ordering Activity.
- z) "**Work-Around**" means a temporary resolution of a Problem that restores the service and operation of a Product without material loss of functionality. A Work-Around may consist of a patch or instructions on how to avoid a Problem.

2. Contractor's Support Obligations.

Upon Contractor's acceptance of a valid purchase order from Ordering Activity for any Service Contract and Ordering Activity's payment of the applicable GSA fees, Ordering Activity will be entitled to receive such purchased Juniper Networks Services in accordance with the terms of this Attachment A.

- a) **Hardware Repair/Replacement.** Contractor through Juniper Networks will use commercially reasonable efforts to provide Hardware repair/replacement in accordance with the Hardware replacement support option purchased by Ordering Activity, subject to the terms set forth in Section 4. All returned Hardware must be returned in accordance with Juniper

Networks' RMA process described in this Attachment A. Juniper Networks is not responsible for transportation or customs delays.

- b) Technical Support. In accordance with Section 5, Contractor through Juniper Networks will use its commercially reasonable efforts to:
- i) Provide Ordering Activity access to all Supported Releases and related Documentation that Ordering Activity has licensed from Juniper Networks upon their general commercial release;
 - ii) Provide Ordering Activity with access to JTAC staff, who will work with Ordering Activity to determine an appropriate priority level for each Problem and respond to each Problem accordingly, including escalating the Problem through Juniper Networks management as needed; and
 - iii) Post web-based reports to the Customer Support Center.
- c) On-Site Support. If Ordering Activity has purchased a Juniper Networks Services Contract that includes on-site support (not available in all Territories), then, upon Ordering Activity's request, Contractor through Juniper Networks will use its commercially reasonable efforts promptly to dispatch a technician to the affected Site. If Ordering Activity requires on-site support but has not purchased a Juniper Networks Services Contract that includes on-site support, then, upon Ordering Activity's request and subject to payment of then-applicable GSA fees, Contractor through Juniper Networks will use commercially reasonable efforts to dispatch a technician to the affected site within a timeframe to be determined by Juniper Networks based upon the availability of resources. In such case, Ordering Activity will be billed at Contractor's then-applicable GSA rates for time and materials, and for reasonable travel and living expenses. In either case, provision of onsite support is subject to the following limitations:
- i) On-site support is limited to Hardware replacement only; Contractor through Juniper Networks does not provide On-site assistance for software troubleshooting, or any software related issues.
 - ii) On-site support may not be available for some Juniper Networks products or in some geographic regions and may require a "set-up" period before they can be made available to Ordering Activity. During such set-up period, Contractor through Juniper Networks will use commercially reasonable efforts to provide to Ordering Activity the closest available service with respect to such product line or in such geographic region. Next Day On-site is provided in the regional time zone of the Ordering Activity Site.
 - iii) For the Juniper Networks -IDP and Secure Access product lines, Contractor through Juniper Networks will only provide assistance with the delivery and initial set up of the Hardware. Ordering Activity is responsible for the reconfiguration and/or allowing JTAC access to the device to restore the Hardware to its last saved configuration status. Ordering Activity is responsible for maintaining a backup of the configuration that can be used to restore the device.
 - iv) Ordering Activity acknowledges that Contractor through Juniper Networks intends to subcontract to local affiliates or third parties the performance of On-site Support in certain countries, in which case such subcontractor shall be directly and primarily liable to Ordering Activity for performance of such subcontracted services.
- d) End of Life Procedures and End of Support. Contractor through Juniper Networks shall abide by the EOL and EOS Notification Policy and Procedures (<http://www.juniper.net/support/eol/>).
- e) Exclusions. Contractor through Juniper Networks is not obligated to provide any of the following:
- i) third-party devices (hardware, software cabling, etc. not provided by Juniper Networks or Problems associated with or arising directly or indirectly from such components;
 - ii) Problems with Product that have been installed by any party other than (A) Juniper Networks or (B) a party authorized by Juniper Networks; Problems with Product that have been modified without Juniper Networks' written consent by any person (including unauthorized modifications by Operate Specialist);
 - iii) Problems relating to incompatibility of the Product with third-party devices;
 - iv) Product that is damaged other than through the negligence or willful misconduct of Juniper Networks or its employees
 - v) Problems caused by the use of the Product other than in accordance with applicable Documentation
 - vi) problems with Products where Ordering Activity did not provide the required Product information set forth in Section 3 f);
 - vii) problems caused by the misuse or abuse of Product generally;
 - viii) Problems with Software that is not a Supported Release;

- ix) Problems with Products that were not purchased directly from Juniper Networks or any authorized Juniper Networks reseller unless such products have been inspected, repaired and certified by Juniper Networks prior to the commencement of any Juniper Networks Services.
- vi) problems with Products or parts thereof that are past their End of Life date, as provided in subsection 2(d) above.

Ordering Activity may, at its sole option, request that Contractor through Juniper Networks provide Support for one or more of the above excluded problems. If Juniper Networks does attempt to resolve one or more of the above excluded problems based on Ordering Activity's request, Ordering Activity agrees to pay for such Support at the then-applicable GSA rates for time and materials.

3. Contractor Obligations.

- a) Maintaining Supported Releases. All Supported Releases provided to Ordering Activity shall be subject to the terms of this Attachment A. Ordering Activity is not required to install every Supported Release as they become available from Juniper Networks. However, Ordering Activity acknowledges that in order to obtain Support for problems with Software that is not a Supported Release and which cannot be corrected by implementation of a pre-existing Work Around or Problem Resolution, it may be required to upgrade to a Supported Release to address any such problems.
- b) Network Access. For any Problem identified as a Priority 1 Problem, Ordering Activity will provide Contractor through Juniper Networks or its authorized service representative access to the affected network environment, and will assign a technical contact for Juniper Networks. Furthermore, if Juniper Networks determines that its technical personnel need access to the Ordering Activity's network in order to remotely diagnose a problem, Ordering Activity will ensure that Juniper Networks' personnel have the necessary level of authorized access to such network. Ordering Activity shall have the right to observe such access.
- c) Staffing. Ordering Activity shall maintain a reasonable number of support engineers who are trained on Juniper Networks Products. Ordering Activity's support engineers must be proficient in the operation of the Products and be able to perform basic Hardware and Software configuration and troubleshooting. All communication to Contractor through Juniper Networks' engineers of customer issues and responses will be conducted in English. Ordering Activity shall pay for Support rendered by Juniper Networks due to modifications not authorized by Juniper Networks at Contractor's then prevailing GSA rates for time and materials.
- d) Decommissioned Hardware. Ordering Activity may elect to cover all or none of its Product under this Attachment A except that, effective at the end of each annual term of this Attachment A, Ordering Activity may exclude Product that it has permanently decommissioned and identified in a written notice to Contractor through Juniper Networks at least 30 days prior to such decommission. In addition, Juniper Networks will grant Ordering Activity a pro-rated credit for any pre-paid support on Products that are permanently decommissioned or accidentally destroyed during an annual support term and Ordering Activity may use such credit for future service orders only.
- e) Configuration Files. Ordering Activity is responsible to maintain a backup of the configuration that can be used to restore the device.
- f) Product Information. In order for Contractor through Juniper Networks to provide the appropriate level of Support promptly and efficiently, Ordering Activity must provide to Juniper Networks the following information for each Product under a Support plan:
 - i) product license key or serial number;
 - ii) configuration;
 - iii) installation address; and
 - iv) Site contact person.

Ordering Activity may either provide the above Product information to Contractor through Juniper Networks in the purchase order for each Product. If Ordering Activity physically moves any Product from the original Site to another location, Ordering Activity must notify Juniper Networks immediately to update their support contract. Prior to Juniper Networks' receipt of such notification, Juniper Networks shall not be liable for any lapses in service coverage or hardware delivery delays with respect to such Product.

4. Hardware Repair/Replacement.

- a) Hardware Return Procedure. In the event of Hardware failure, Ordering Activity must contact JTAC for Hardware failure validation and troubleshooting. After JTAC has validated the Hardware failure, Ordering Activity will receive a Return Material Authorization (RMA) number. To ensure proper tracking and handling of returned Hardware or parts, all Hardware returned to Contractor through Juniper Networks must have a RMA number assigned prior to their return. Ordering Activities who are not under any Support Plan may purchase Support from Contractor at Contractor's then prevailing GSA rates for time and materials. Hardware returns that are improperly packaged or do not include required information and RMA numbers will not be accepted and will be returned at Ordering Activity's expense.
- b) Hardware Replacement. If Ordering Activity has purchased a Hardware Replacement Support Plan, then Contractor through Juniper Networks will provide replacement part(s) to Ordering Activity in accordance with the Hardware Replacement Support Plan selected by Ordering Activity and include a return kit with each replacement part. Provided in

each return kit will be a return instruction sheet, prepaid air bill, and a reprinted return label, as applicable. Ordering Activity must follow the return instructions to return the defective Hardware or parts within 10 business days of failure or pay the purchase price of replacement parts for any Hardware.

5. Technical Support.

- a) Supported Releases. Contractor through Juniper Networks will make available Supported Releases and applicable Documentation, if any, to Ordering Activity as such releases become generally commercially available. Such Supported Releases shall be subject to the same Every Supported Release will be accompanied by written installation instructions. Ordering Activity's rights in Supported Releases are subject to this Attachment A.
- b) Access to JTAC. Ordering Activity's access to the JTAC shall be by telephone or web-based. The parties shall use reasonable efforts to establish security measures for the electronic exchange of Problem Reports and other information
- c) Web-Based Technical Support. Contractor through Juniper Networks shall post to the Ordering Activity Support Center, on a regular basis, a report listing the following information:
 - i) bugs, errors, or deficiencies in the Software, and the classification of each;
 - ii) any resolutions or fixes; and
 - iii) any available Work Arouns.
- d) Technical Support Procedures. For each request by Ordering Activity for Technical Support from Contractor through Juniper Networks, Ordering Activity shall provide Juniper Networks with a Problem Report. Juniper Networks shall identify each discrete issue relating to a Problem Report with a unique "Case Number" for tracking purposes. Upon request by Ordering Activity, Juniper Networks shall provide a "Status Report" on any Problem logged for Ordering Activity provided that Ordering Activity identifies the particular Problem by the Case Number assigned to it by Juniper Networks. For Problems that have been resolved, the Status Report shall include the Case Number, the closing resolution for the Problem, the expected date that a Problem Resolution will be released, and a description of any known Work Around. For Problems that have not yet been resolved, the Status Report shall include the Case Number, a Problem resolution plan, and a description of any known Work Around. Each Problem logged for Ordering Activity shall remain open until closure notification is received from Juniper Networks and accepted by Ordering Activity. By mutual agreement between Ordering Activity and Juniper Networks, Problems shall be categorized and handled according to the procedures set forth below:
 - i) P1 – Priority 1 Problems. If the Problem is identified as a Priority 1 Problem, the Juniper Networks' Ordering Activity Service duty manager will be immediately notified of any Priority 1 Problems to ensure engagement of all appropriate resources. Contractor through Juniper Networks and Ordering Activity shall work continuously (on a 24x7x365 basis), and shall use all commercially reasonable efforts, to work with Ordering Activity's dedicated resources to resolve the Priority 1 Problem until a Work Around or a Problem Resolution is successfully implemented. If a Priority 1 Problem is not resolved within a maximum of 1 hour from the time it is classified as such by Juniper Networks, Juniper Networks' Ordering Activity Service will confer with the appropriate Juniper Networks' engineering subject-matter expert. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. If a Work Around is successfully implemented, a Priority 1 Problem shall be reclassified to the appropriate priority level. Subject to the foregoing, Juniper Networks will use all commercially reasonable efforts to deliver a workaround solution within 24 hours of the Priority 1 Problem having been observed or reproduced by Juniper Networks.
 - ii) P2 – Priority 2 Problems. If the problem is classified as a Priority 2 Problem, Contractor through Juniper Networks and Ordering Activity shall work full-time during normal business hours (extending to 24 hours per day as needed), and shall use all commercially reasonable efforts, until a Work Around or Problem Resolution is successfully implemented. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. Subject to the preceding sentence, Juniper Networks will use all commercially reasonable efforts to provide a Work Around or Problem Resolution within 5 calendar days of a Priority 2 Problem being reported to Juniper Networks by Ordering Activity.
 - iii) P3 – Priority 3 Problems. If a problem is classified as a Priority 3 Problem, Contractor through Juniper Networks and Ordering Activity shall work full-time during normal business hours, and shall use all commercially reasonable efforts, until a Work Around or Problem Resolution is successfully implemented. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. Subject to the preceding sentence, Juniper Networks will use all commercially reasonable efforts to provide a Work Around or a Problem Resolution within 30 calendar days of a Priority 3 Problem being reported to Juniper Networks by Ordering Activity.

- iv) P4 – Priority 4 Problems. Contractor through Juniper Networks shall use commercially reasonable efforts to work with Ordering Activity during normal business hours to provide information or assistance as requested. Juniper Networks will use all commercially reasonable efforts to provide a Work Around, Problem Resolution or other requested assistance within 90 calendar days of a Priority 4 Problem being reported to Juniper Networks by Ordering Activity.

The response times set forth in this Section 5 d) constitute targeted goals of the Technical Support to be provided by Contractor through Juniper Networks to Ordering Activity, and it is understood that Juniper Networks shall use commercially reasonable efforts to attempt to resolve any Problems within the target times set for the relevant priority level. The parties acknowledge the potentially idiosyncratic nature of any Problem and agree that any sporadic failure to meet targeted times shall not constitute a breach of Juniper Networks' obligations under this Attachment A.

- e) Escalation Management. In addition to setting priority levels for reported Ordering Activity problems, Contractor through Juniper Networks will provide the following systematic escalation management for Problems:

Owner	Priority 1	Priority 2	Priority 3	Priority 4	Priority 2	Priority 3	Priority 4
Manager, Technical Support	1 hour	12 hours	15 days	30 days			
Director, Customer Service	2 hour	24 hours					
Vice President, Customer Service	4 hours	96 hours					
Vice President, Engineering and Sales	4 hours						
Executive Vice President, Operations and Field Operations	24 hours						

Hardware Repair/Replacement Support

Return-to-Factory

With this option, Ordering Activity may return a defective Juniper Networks product to a Juniper repair facility where it is replaced or repaired within 10 business days. The 10-business-day period begins upon receipt of the defective unit by Juniper at a Juniper repair facility.

Next-Day (not available in all jurisdictions)

The Next-Day option means that Juniper Networks delivers advance replacements for defective hardware on the next business day for replacement requests placed by 3 p.m. local JTAC time, Monday through Friday, except Juniper Networks' regional holidays. For countries where Juniper Networks does not have an in-country depot and next-business-day delivery is unavailable, Juniper will ship the replacement part within 24 hours of the replacement authorization. Actual delivery will be subject to local customs and importation, restrictions, and transportation delays. ("Next Business Day" is defined as 12 hours a day, 5 days a week.).

Same-Day (not available in all jurisdictions)

Same-Day delivery means that Juniper Networks delivers advance replacements for defective hardware or part(s), 24 hours a day, 7 days a week, within 4 hours of final diagnosis of a part failure and replacement authorization by Juniper Networks, to Ordering Activity's physical site if it is located within 50 miles of an authorized Juniper Networks parts depot.

Onsite (not available in all jurisdictions)

When JTAC determines that onsite support is required, an experienced service technician who is trained on Juniper products will be dispatched to the customer site. Upon arrival, this technician will work under the direction of a JTAC engineer to solve the problem(s). If required, a replacement product will already be at the site. The technician will perform tasks as directed by JTAC, and as outlined in the existing Global Service Operations (GSO) policy "Customer Onsite Service Support." Furthermore, the technician will be released from the site upon approval of the JTAC engineer, with concurrence from the customer. The technician will assist with packing up and removing any defective products.

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:
 - 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**

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 it 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.
 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 Ordering Activity are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

ESCALATION OVERVIEW

The ZCare Technical Support Services 24/7 Help Desk provides services escalation resulting from support that is not meeting the actual service levels outlined herein, or in a service emergency where support requirements dictate a response outside of the scope outlined herein. In this event, all escalations are to be directed to Shamus Doyle, KBZ Technical Services Manager by any of the following means:

Office: 215/348-9481 x 106 | Cell: 484/888-8034 | email: shamus.doyle@KBZ .com

McAfee, Inc.
3965 Freedom Circle
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 **McAfee, 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
MCAfee, INC.**

MCAfee, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1) Definitions

- a) **“Authorized Partner”** means any of McAfee’s distributors, resellers or other business partners.
- b) **“Grant Letter”** means a confirmation notice letter issued electronically by McAfee to Ordering Activity confirming 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) and also contains download details.
- c) **“Documentation”** means explanatory materials in printed, electronic, or online form accompanying the Software in English and other languages if available.
- d) **“McAfee”** means (a) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA.
- e) **“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, 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.
- f) **“Ordering Activity”** means an entity authorized to order under GSA Schedule contracts as defined in GSA Order ADM4800.2G, as may be revised from time to time and to which the license entitlements contained in this Agreement are granted.
- g) **“Software”** means each McAfee software program in object code format licensed by McAfee and purchased from McAfee or its Authorized Partners, including Upgrades.
- h) **“Support”** or **“Technical Support”** means the support services offered by McAfee for the support and maintenance of the Software and McAfee brand hardware further specified in the McAfee Technical Support and Maintenance Terms.
- i) **“Updates”** are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Products 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.
- j) **“Upgrade”** means any and all improvements in the 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.

2) License Grant

Subject to the terms and conditions of this Agreement, McAfee hereby grants Ordering Activity a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) listed in the Grant Letter solely for Ordering Activity’s own internal business operations. Ordering Activity acknowledges that the Software and all related information are proprietary to McAfee and its suppliers. Ordering Activity is not granted rights to Updates and Upgrades unless Ordering Activity has purchased Support or a service subscription.

3) Copy and Use terms

- a) **Product entitlement.** The use of the Software depends on the licenses purchased (e.g. Nodes) and is subject to the Product Entitlement Definitions set forth at http://www.mcafee.com/us/local_content/legal/product_entitlement_definitions.pdf on the applicable date of Ordering Activity’s Grant Letter.
- b) **Multiple platforms/ Bundles.** If the Software supports multiple platforms or if 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 Ordering Activity’s product entitlement.
- c) **Term.** The license is effective for a limited time period (**“Term”**) in the event that such Term is set forth in the Grant Letter, otherwise the licenses shall be perpetual.
- d) **Copies.** Ordering Activity may copy the Software as reasonably necessary for backup, archival or disaster recovery purposes.
- e) **Managing Party.** If Ordering Activity enters into a contract with a third party in which the third party manages your information technology resources (**“Managing Party”**), Ordering Activity may transfer all its rights to use the Software to such Managing Party, provided that (a) 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; (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Ordering Activity provides McAfee with written notice that a Managing Party will be Using the Software on Ordering Activity’s behalf.

- f) General Restrictions. Ordering Activity may not, nor allow any third party to: (i) decompile, disassemble, or reverse engineer the Software, except to the extent expressly permitted by applicable law, without McAfee's prior written consent; (ii) remove any product identification or proprietary rights notices of the Software or Documentation; (iii) lease, lend, or use the Software for timesharing or service bureau purposes; (iv) modify or create derivative works of the Software, (v) except with McAfee's prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (vi) otherwise use or copy the Software except as expressly provided herein.

4) **Technical Support and Maintenance**

The McAfee Technical Support and Maintenance Terms apply if Ordering Activity has purchased Support. After the support or service subscription period specified in a Grant Letter has expired, Ordering Activity has no further rights to receive any Support including Upgrades, Updates, and telephone support.

5) **Limited Warranty and Disclaimer**

- a) Limited Warranty. McAfee warrants that, when at the purchase date, and for a period of sixty (60) days thereafter ("Warranty Period"), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.
- b) Exclusive Remedy. In case of any breach of the above limited warranty, McAfee will (a) repair or replace the Software or (b) if such repair or replacement would in McAfee's opinion be commercially unreasonable, 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. THE ABOVE WARRANTIES ARE ORDERING ACTIVITY'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND MCAFEE MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
- e) Exceptions. Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to Ordering Activity. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE WARRANTY PERIOD (OR THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW).

6) **Limitation of Remedies and Damages**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, WORK STOPPAGE, AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES.

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 exceed the lesser of:

- a) the amount of total fees paid or payable by Ordering Activity for the Software giving rise to such claim during the 12 months immediately preceding the event giving rise to such claim, or
- b) the applicable McAfee list price, at the date of the purchase, for the Software giving rise to such claim ordered by Ordering Activity during the 12 months immediately preceding the event giving rise to such claim,

even if the other party has been advised of the possibility of such damages.

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. Furthermore, no provision of this Agreement shall 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.

THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY ORDERING ACTIVITY CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO ORDERING ACTIVITY'S NEEDS IN THE EVENT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS ORDERING ACTIVITY AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGE THAT WITHOUT ORDERING ACTIVITY AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THIS SOFTWARE WOULD BE HIGHER.

7) **Intellectual Property Indemnity**

- a) **Third party claims.** McAfee shall defend and hold Ordering Activity harmless from any claim by a third party that the Software infringes any patent, copyright or trade secret of that third party, provided: (i) McAfee is notified promptly, and in any event no later than within 14 days upon Ordering Activity receipt of notice of the claim; and (ii) McAfee receives reasonable cooperation from Ordering Activity necessary to perform McAfee's obligations hereunder. Pursuant to 28 U.S.C. § 516, McAfee 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 McAfee; (ii) shall not impair McAfee's own rights, defenses, or claims against the third party claimant; (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of McAfee, and (iv) shall in good faith reasonably cooperate and consult with McAfee during the course of settlement negotiations and prosecution of the claim, and shall afford McAfee access to all non-privileged communications and documentation with all parties, witnesses, and judicial or administrative bodies associated with such claim upon McAfee's request. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government shall not pay any costs, fees, or damages arising from claims against McAfee relating to use of the Software by Ordering Activity. The foregoing obligation of McAfee does not apply with respect to Software or portions or components thereof: (i) not supplied by McAfee; (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation (iii) made in accordance with Ordering Activity's specifications; (iv) modified by anyone other than McAfee, if the alleged infringement relates to such modification; (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination; or (vi) where Ordering Activity continues the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.
- b) **Remedy and Liability.** In the event the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, McAfee shall, at its sole option, do one of the following: (i) procure the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; (iii) replace the Software with software which is substantially similar in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to McAfee, McAfee shall refund the residual value of the purchase price paid 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. This Section 7 states McAfee's sole liability and Ordering Activity's exclusive remedy for intellectual property infringement claims.
- 8) **Termination**
Without prejudice to Ordering Activity's payment obligations, Ordering Activity may terminate Ordering Activity's license at any time by de-installing the Software. Upon such termination 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 as "Evaluation Software", then the provisions of this section apply and shall supersede any other conflicting term of this agreement. 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 Ordering Activity "AS-IS", and McAfee disclaims any warranty or liability obligations of any kind. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes only 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, Ordering Activity agrees to pay an amount equal to then-current GSA price for the Evaluation Software. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY (50) DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.
- b) **Beta Software.** If the Software received has been identified "Beta" Software, then the provisions of Section 9(a) above shall apply accordingly. McAfee has no obligation to further develop or publicly release the 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, non-exclusive, royalty-free, worldwide license to use, copy, distribute, 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 Ordering Activity agrees to return or destroy all earlier Beta Software received from McAfee
- c) **"Free" or "Open Source" Software.** The product 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.
- 10) **Notice to United States Government End Users**
The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.
- 11) **Privacy**
Ordering Activity acknowledges and agrees that the Software may contain functionality to detect and report threats and vulnerabilities on Ordering Activity's computer network. Such functionality may automatically collect information about

Ordering Activity's system (including without limitation information regarding network, licenses used, operating system types, versions, total scanners deployed, database size, etc.) and submit such consolidated information to McAfee.

- 12) **Audit**
 McAfee may, at its expense, upon reasonable prior written notice to Ordering Activity and during standard business hours, audit Ordering Activity with respect to Ordering Activity's compliance with the terms of this Agreement no more than once per year. Ordering Activity understands and acknowledges that McAfee utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, Ordering Activity will provide a system generated report verifying Ordering Activity's Software deployment, such request to occur no more than one (1) time per 12 months. McAfee will not unreasonably interfere with the conduct of Ordering Activity's business. Any onsite audits of Ordering Activity shall be contingent upon reasonable notice to Ordering Activity and adherence to reasonable security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are required.
- 13) **Export Controls**
 Ordering Activity acknowledges that the Software is subject to U.S. and when applicable, European Union export regulations. 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. Ordering Activity shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. 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 http://mcafee.com/us/about/export_compliance/index.html. McAfee reserves the right to update http://mcafee.com/us/about/export_compliance/index.html. from time to time at its sole discretion.
- 14) **Governing Law**
 This Agreement will be governed by and construed in accordance with Federal law. Specifically, any disputes relating to this Agreement shall be resolved in accordance with the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 7101-7109.
- 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 and of substantial value to the other Party, which value could be impaired if such information were disclosed to third parties ("**Confidential Information**"). 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 under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (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 is Confidential Information and shall not be disclosed.
- 16) **Miscellaneous**
- a) Except for actions for nonpayment 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 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, including all documents incorporated by reference, represents the entire agreement between the parties regarding the licensing of the McAfee products, and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If Ordering Activity issues an order to an Authorized Partner or to McAfee and the terms and conditions of the order conflict with the terms and conditions of a) this Agreement or b) of the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee. 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, the remainder of this Agreement shall continue in full force and effect.

All notices, requests, demands, and determinations for McAfee under this Agreement (other than routine operational communications) shall be sent to the McAfee address specified above in this Agreement, addressed to "Attention: Legal Department".

EXHIBIT A – MCAFEE LIMITED WARRANTY ON HARDWARE

The following Limited Warranty applies to McAfee, Inc. ("McAfee") Hardware products (i) sold by McAfee or a McAfee authorized reseller or distributor and (ii) purchased for Ordering Activity's use, and not for resale. The term "Hardware" means hardware equipment together with all parts, elements or accessories, and any combination of them, but does not include any Software programs, code, routines or other intangible products (whether pre-loaded or subsequently loaded by Ordering Activity, McAfee, a reseller, or any third party). Additional Hardware Services are available from McAfee under a separate Technical Support Addendum. Please contact your McAfee sales representative or authorized distributor or reseller for more information.

1. Warranty Period.

- 1.1 McAfee warrants that for a period of and ninety (90) days after the date McAfee initially ships Hardware to Ordering Activity ("**Warranty Period**"), the Hardware will be free from material defects ("**Defects**") in workmanship and that it will conform to the McAfee published specifications for the Hardware ("**Specifications**").
- 1.2 THE ABOVE WARRANTIES ARE ORDERING ACTIVITY'S WARRANTIES WITH REGARD TO THE HARDWARE AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MCAFEE DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF HARDWARE. THESE WARRANTIES GIVE ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO ORDERING ACTIVITY, IN WHICH CASE SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. Nothing in this Agreement shall exclude or limit any liability which cannot be excluded or limited by applicable law.

2. Warranty Service.

- 2.1 To receive warranty service on Hardware, Ordering Activity must contact McAfee or its agent. If Ordering Activity does not register its Hardware with McAfee, Ordering Activity may be required to present proof of purchase.
- 2.2 Hardware products covered under the Warranty will be repaired or replaced with like or better quality at McAfee's sole discretion. For locations where Onsite service is not available McAfee will issue a Return Materials Authorization ("**RMA**") number including shipping information and tracking number. Ordering Activity will properly package, insure, and ship prepaid the defective Hardware to the McAfee repair site at Ordering Activity expense. Damage or loss of goods during shipment to McAfee is the responsibility of the Ordering Activity. McAfee will pay all packing, shipping, and insurance to ship the repaired or replacement Hardware to Ordering Activity.
- 2.4 Prior to returning any Hardware to McAfee for repair or replacement, Ordering Activity must obtain an RMA number from McAfee Technical Support. HARDWARE SENT TO MCAFEE WITHOUT AN RMA NUMBER MAY BE REJECTED BY MCAFEE AND RETURNED TO ORDERING ACTIVITY AT ORDERING ACTIVITY'S EXPENSE. Ordering Activity should be prepared to provide McAfee with the location of the Hardware, a detailed description of the problems or errors, a description of the Hardware, including serial number or Service Tag number, and the names and versions of any operating systems and Software loaded on the Hardware, including patches and fixes. McAfee may request that Ordering Activity take certain actions to determine whether the problem or error is related to the Software, Hardware, or other item. Ordering Activity shall reasonably cooperate with McAfee during this process.
- 2.5 Returned Hardware becomes the property of McAfee at the time it is determined by McAfee to be defective. Ordering Activity will own all replacement Hardware provided by McAfee to Ordering Activity. Replacement Hardware provided by McAfee will assume the existing warranty of the original Hardware.
- 2.6 Some parts of the Hardware may be designated Customer Replaceable Units ("**CRUs**"). McAfee ships, at McAfee's option and expense, CRUs to Ordering Activity for replacement by Ordering Activity. Ordering Activity must return, at McAfee's expense in the package provided, all defective CRUs to McAfee within fifteen (15) days following its receipt of the replacement CRU or Ordering Activity will be invoiced for the CRU at the then-current replacement cost.

3. Limitations on Warranty.

- 3.1 This warranty applies only in the country where Ordering Activity installs the Hardware. The warranty may not be transferred to another country without the written authorization of McAfee. Ordering Activity may not transfer the warranty to a third party without the written authorization of McAfee. Upon a transfer of the Hardware Ordering Activity must notify McAfee in writing of the identity of the third party and location of the Hardware within fifteen (15) days after transfer.

- 3.2 This warranty does not cover Defects, damage or failure of Hardware caused by misuse, accident, unauthorized modification, improper use or maintenance, a force majeure event (e.g., earthquake, lightning, flood, fire, etc.), or any other damage or failure caused by a third party or a third party product.
 - 3.3 Unless otherwise provided in a separate maintenance agreement with McAfee and except for the warranties specifically described in this Limited Warranty, any technical or other support provided for Hardware, such as phone or website support, is provided "AS-IS" without warranty of any kind
 - 3.4 This warranty is void if product or part identification labels are removed from the Hardware without written authorization from McAfee. Further, this warranty is void if additional Hardware or Software is installed on the Hardware without written authorization from McAfee, or if any tampering is detected with the Hardware. This warranty does not apply to any Hardware that is located in an unsuitable operating environment, has been altered, except as authorized by a McAfee Technical Support representative.
 - 3.5 UNDER NO CIRCUMSTANCES IS MCAFEE LIABLE TO ORDERING ACTIVITY FOR ANY OF THE FOLLOWING: (A) LOSS OF OR DAMAGE TO RECORDS OR DATA, (B) THIRD-PARTY CLAIMS FOR DAMAGES, OR (C) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS OR LOST OPPORTUNITIES), EVEN IF MCAFEE IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. MCAFEE SHALL HAVE NO LIABILITY OR OBLIGATION FOR ANY DAMAGES THAT ARISE FROM THE USE OF HARDWARE AS PART OF OR IN COMBINATION WITH ANY DEVICES, PARTS OR THIRD PARTY PRODUCTS THAT ARE NOT PROVIDED BY MCAFEE AND ARE INCONSISTENT WITH THE DESIGNED PURPOSE OF THE MCAFEE HARDWARE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO ORDERING ACTIVITY. THIS PROVISION SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS WARRANTY UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.
 - 3.6 MCAFEE WARRANTS THE MATERIAL AND WORKMANSHIP OF ANY PRODUCT PURCHASED FROM MCAFEE THAT WAS NOT MANUFACTURED BY MCAFEE FOR 90 DAYS. THIS IS THE ENTIRE LIMITED WARRANTY ON HARDWARE AND DOES NOT APPLY IN ANY WAY TO ANY SOFTWARE LICENSED BY ORDERING ACTIVITY. ANY WARRANTY ON SOFTWARE LICENSED BY ORDERING ACTIVITY IS SET OUT IN THE LICENSE AGREEMENT FOR SUCH SOFTWARE.
- 4 General Terms.
- 4.1 Nothing in this Limited Warranty on Hardware affects any statutory rights of consumers that cannot be waived or limited by contract.
 - 4.2 Prior to delivering Hardware to McAfee, Ordering Activity shall ensure:
 - a The Hardware is free of any legal obligations or restrictions that prevent McAfee from exchanging, repairing or replacing the Hardware.
 - b All necessary consents (e.g., premises owner consent, if applicable) have been obtained to allow McAfee to access, repair, or replace the Hardware.
 - 4.3 If McAfee provides any services at Ordering Activity's location or facilities, Ordering Activity warrants that (a) Ordering Activity shall make the Hardware available to McAfee for repair or replacement during McAfee Normal Business Hours, and (b) the premises where the Hardware is located are in a safe condition and that McAfee's personnel will not be subject to undue risk or danger while on the premises.
 - 4.4 Notwithstanding any language in the Agreement to the contrary, McAfee may assign this Limited Warranty on Hardware or any obligations hereunder. McAfee will use commercially reasonable efforts to notify Ordering Activity of any such assignment.

EXHIBIT B – MCAFEE TECHNICAL SUPPORT AND MAINTENANCE FOR HARDWARE AND SOFTWARE

McAfee (as defined below) will provide Technical Support services in accordance with the following terms and conditions ("Terms").

- 1) **Definitions**
 - a. "**Authorized Partner**" means any of McAfee's authorized distributors, resellers or other business partners.
 - b. "**Grant Letter**" means a confirmation notice issued electronically by McAfee 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.
 - c. "**Grant Number**" means a unique number communicated by McAfee in a Grant Letter confirming an Ordering Activity's Support entitlement and is required when accessing Support.
 - d. "**Hardware**" means McAfee branded hardware equipment but excludes any Software or other intangible products.

- e. **“McAfee”** means (a) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA if the Support is purchased in the United States, Mexico, Central America, South America.
 - f. **“Ordering Activity”** means an entity authorized to order under GSA Schedule contracts as defined in GSA Order ADM4800.2G, as may be revised from time to time which has purchased Products and to which McAfee provides Support.
 - g. **“Product(s)”** means McAfee’s Software and Hardware product specified in a Grant Letter.
 - h. **“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.
 - i. **“Software”** means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Ordering Activity.
 - j. **“Support Period”** means the effective time period for which the Ordering Activity has purchased Support that is confirmed in a Grant Letter.
 - k. **“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”).
 - l. **“Support Level(s)”** means the McAfee Support offering purchased by Ordering Activity. Software and Hardware Support Levels are defined on datasheets available at: <http://www.mcafee.com/us/support/support-benefits.aspx>
 - m. **“Upgrade”** means any and all improvements in the Products 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.
 - n. **“Updates”** are related to content of the Product and include without limitation all DATs (“DATs” or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Products which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- a. **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. Ordering Activity will not be entitled to receive Support outside of the Support Period.
- b. **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. Ordering Activity shall promptly download, distribute and install all Updates as released by McAfee during the Support Period. McAfee strongly suggests that Ordering Activity also download, distributes and installs all Upgrades as released by McAfee during the Support Period and 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.
- c. **Supported Versions and End of Life**
The provision of Support is limited to (i) the current version and (ii) the immediately preceding version of the Product. Notwithstanding any of the foregoing, Support is subject to McAfee’s End-of-Life Policy available at http://www.mcafee.com/common/media/mcafeeb2b/support/terms/Support_Policy-Product_Support_EOL.pdf It is Ordering Activity’s responsibility to review McAfee’s Product Support Lifecycle webpage at: http://www.mcafee.com/us/enterprise/support/customer_service/end_life.html 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://my.mcafee.com/content/SNS_Subscription_Center. These website references are for informational purposes only.
- d. **Response Times**
McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <http://www.mcafee.com/us/support/support-benefits.aspx>. Access to McAfee’s websites for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors. This website reference is for informational purposes only.
- e. **Bug Fixing and Remote Diagnostics**
McAfee uses commercially reasonable efforts to provide work-around solutions or patches to reported software problems. 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 Support subject to an additional fee including reasonable travel and other expenses. Such additional fee, including reasonable travel and other expenses, shall be negotiated and procured by Ordering Activity as a separate engagement.
- f. **Support Period and Expired Support**
The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. In the event the Support expires, any reinstatement of Support must be purchased to cover the lapsed Support since expiration and be renewed until the Support is current. Support must be purchased within one (1) year after expiration of the previous Support Period.

- g. **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 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 on a per-product family basis and are sold per Support Region.
- h. **Acquired Company Products**
From time to time McAfee may acquire other companies and continue to support the products licensed by such companies ("**Acquired Products**"). The Support Level(s) defined herein may not be applicable to the Acquired Products at the time of the acquisition but 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.
- i. **Exclusions**
McAfee has no obligations to, (i) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (ii) provide Support for Hardware damaged by or Hardware failures caused by Ordering Activity (iii) import or export customer data, create or modify custom business rules or reports, or support custom modifications to databases, active server pages, or other code, components or programs. iv) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published McAfee specifications.
- j. **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, and (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. 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.
 - 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) **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 <http://www.mcafee.com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf>
 - 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 Ordering Activity to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.
- 13) **Confidentiality**
McAfee and Ordering Activity agree to hold each other's Confidential Information in confidence and not to disclose it to any third party without the prior written consent of the disclosing party or otherwise required by law. "**Confidential Information**" means information disclosed by discloser or its affiliates, which is identified as confidential, or which can reasonably be considered confidential due to its nature, or in the circumstances surrounding disclosure. Confidential Information does not include information which: (i) is in the public domain; (ii) was or lawfully becomes known to the receiver; or (iii) was independently developed by the receiver. The parties agree to use such Confidential Information of the disclosing party only as it relates to the performance of the party's obligations under these terms. Further, the receiving party shall use the same degree of care it uses with respect to its own confidential information to prevent the unauthorized disclosure to a third party, but in no event less than reasonable care.
- 14) **Warranty**
MCAFFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, AND MCAFFEE'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, 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).

15) **Limitation of Liability**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, WORK STOPPAGE, AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES. THIS PROVISION SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO SUPPORT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

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 exceed the lesser of:

- a. the amount of Support fees, attributable to the Product giving rise to the claim, paid or payable by Ordering Activity for a twelve (12) month period immediately preceding the event giving rise to the claim or
- b. the applicable McAfee Support List Price current at the date of the purchase or renewal attributable to the Product giving rise to such claim, even if the other party has been advised of the possibility of such damages. "List Price" shall mean for the purpose of this clause the then current annual fee as listed in McAfee's applicable list price for the Support of the Product.

No provision of this Agreement shall exclude or limit in any way (i) the liability of both parties for death or personal injury caused by negligence or (ii) Ordering Activity's liability for excess usage and/or any breach of McAfee's intellectual property rights.

THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY ORDERING ACTIVITY CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO ORDERING ACTIVITY'S NEEDS IN THE EVENT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS ORDERING ACTIVITY AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT ORDERING ACTIVITY'S AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THIS SOFTWARE WOULD BE HIGHER

16) **General**

- c. 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.
- d. 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.
- e. Audit. McAfee may, at its expense, upon reasonable prior written notice and during standard business hours, audit Ordering Activity with respect to Ordering Activity's compliance with these terms no more than once per year. Any onsite audits of Ordering Activity shall be contingent upon adherence to reasonable security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are required. Ordering Activity understands and acknowledges that McAfee utilizes a number of methods to verify and support Product use by its customers. These methods may include technological features of the Product that prevent unauthorized use and provide Product deployment verification. Upon reasonable request, Ordering Activity will provide a system generated report verifying the Product deployment, such request to occur no more than one(1) time per year. McAfee will not unreasonably interfere with the conduct of Ordering Activity's business.
- f. Export Control. The Products and Support are subject to export controls under the U.S. Export Administration Regulations and implementing regulations and other applicable law. Therefore, the Products and Services may not be exported or re-exported to entities within, or residents or citizens of, embargoed countries or countries subject to applicable trade sanctions, nor to prohibited or denied persons or entities without proper government licenses. Information about such restrictions can be found at the following websites:
<http://www.treas.gov/offices/enforcement/ofac/> and <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>.
- g. ITAR. Ordering Activity acknowledges that Support provided hereunder shall not be used for the design, development, configuration, adaption or modification of a military item listed on the United States Munitions List

- (USML http://www.access.gpo.gov/nara/cfr/waisidx_05/22cfr121_05.html) which would subject Support to the International Traffic in Arms Regulations (ITAR, http://www.pmddtc.state.gov/regulations_laws/itar.html) .
- h. Governing law. These terms will be governed by and construed in accordance with Federal law.

17) **Entire Agreement**

The Terms and any additional terms referenced herein 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. The Terms may not be modified except by a written addendum agreed to by McAfee and Ordering Activity.

Multivista Franchise Systems, LLC
203-38 Fell Avenue
North Vancouver B.C., Canada

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

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

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

MULTIVISTA LICENSE, WARRANTY AND SUPPORT TERMS

Service Descriptions

This Attachment A described below combines Contractor's state-of-the-art Multivista indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones. The Multivista system will utilize actual construction drawings, making such drawings interactive and accessible anywhere through a secure on-line interface. For all documentation referenced herein, indexing and navigation is organized by both time and location throughout the Project.

Site Survey and Progressions Sets:

"Progression" photo sets are performed at pre-determined intervals throughout the duration of construction. Progression photos broadly track all aspects of construction through time.

The Site Survey and Progression Sets are generally included in all subscriptions to the Multivista system. They are critical tools for the communication and project management aspects of all product types.

- **Site Survey (Pre-Construction):** The pre-construction site survey is a one-time shoot that provides coverage of the site and its immediately surrounding area to carefully memorialize conditions before a project begins.
- **Exterior Progression Shoots:** Exterior Progression photos are taken from key perspectives along site perimeters and 360 degrees around each building envelope during erection. Exterior progressions track the construction of building elevations and all work within the immediate vicinity of the exterior of the building, including some site work. Exterior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection. Exterior progression documentation typically begins at substantial framing, and not at commencement of site work. Exterior progressions can begin at commencement of site work for the purpose of *broadly* capturing site work upon request.
- **Interior Progression Shoots:** Interior Progression photos track the interior improvements from when interior work begins (typically, at the commencement of stud-work) to completion. Interior Progressions broadly track the improvements from logical perspectives. Interior Progressions are designed to provide comprehensive coverage of the various trades coming together over time. Interior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection.

Detailed Sets ("Exact-Built[®]):

Detailed photo sets serve as "visual as-builts" which are performed at critical milestones during construction. They offer a higher concentration of photos and perspectives than the Progression shoots and/or focus on details of particular interest or importance to the Ordering Activity.

The Fundamental Exact-Built[®]:

Depending on the product type, subscriptions to the Multivista System generally include at least two out of three of the following Exact-Built[®] shoots which, when combined with the Site Survey and Progression Shoots, result in an unparalleled permanent documentation package superior to any known "best-practices."

- **Pre-Slab Exact-Built[®]:** This process will include overlapping images of all roughed-in MEP, cabling systems and other structural components *within* the building envelope(s), post inspection (where necessary), just prior to the concrete being poured.
- **Interior MEP Exact-Built[®]:** Mechanical, Electrical, Plumbing (MEP) and all other systems in walls and ceilings will be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process provides a high concentration of overlapping coverage allowing for all finished systems to be viewed in great detail. This Exact-Built[®] sweeps the entire project: every wall and every ceiling, on every floor of every building, throughout the entire Project. Note that this will not capture pre-slab, site, or in-slab-on-deck systems or other "horizontal" MEP work.
- **Interior Finished Condition Exact-Built[®]:** At Certificate of Occupancy or other "finished" milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

- **Elevation Exact-Built®**: – documentation of the entire building and skin capturing all exterior facades of building, to include windows and exterior skin to be determined by the Ordering Activity.

Custom Exact-Built®:

These Exact-Built® shoots are project-specific Detailed Sets that are not generally included in standard subscriptions to the service, but can be added to scope upon request.

- **Existing Condition Exact-Built®**: At Certificate of Occupancy or other “finished” milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.
- **Slideshows**: Slideshows capture miscellaneous occurrences or conditions while a photographer is on-site to perform any other shoot in the Order. These conditions are those that do not fit neatly into the building envelope interface (i.e., materials stored on site). Slideshows are not linked to architectural plans in the same manner as the formal shoots; however, they will be dated, labeled and stored on the Ordering Activity’s interface. Thus, all of Ordering Activity’s information remains in one “place.” Owner and Superintendent photograph collections of critical events or conditions may also be provided to Contractor for incorporation into the Slideshow collections.

Web Camera Hosting Packages

Web hosting is integrated into the Multivista Documentation Software. This includes live 24/7 image stream; static images (1920x1080 resolution), archived every 15 minutes between 6:00am and 6:00pm local time with ability to perform historical review; camera stream re-broadcasting capable of supporting up to twelve (12) concurrent users. Installation and Webhosting are included with the Web Camera options.

- **3 MP - Fixed Dome Camera** - Axis P3346-VE 6mm Network Camera Kit - PoE Connection Kit
- **2 MP - PTZ Dome Camera** - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - PoE Connection Kit
- **3 MP - Fixed Dome Camera** - Axis P3346-VE 6mm Network Camera Kit - 5.8 GHz Wireless Connection Kit
- **2 MP - PTZ Dome Camera** - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - 5.8 GHz Wireless Connection Kit
- **3 MP - Fixed Dome Camera** - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit
- **2 MP - PTZ Dome Camera** - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit
- **3 MP - Fixed Dome Camera** - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit - Lightning Zone
- **2 MP - PTZ Dome Camera** - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit - Lightning Zone

Video Services:

Contractor uses high definition video equipment to document “As Delivered” construction events. Documentation comprises of Video recordings of dynamic events during the construction process. This deliverable may include but not limited to owner or process training videos, specific milestones or events and inspections. The deliverable includes post production editing. The final deliverable will be on a DVD or hard drive format and is not hosted on the Contractor’s Multivista website or server.

Additional Items

Contractor will accommodate, without charge, limited additional items that may be captured during our scheduled visits and included in the Slideshow section of our service. Additional items requested which are of significant scope, may be ordered separately.

Miscellaneous

- 1) **SERVICES**: Contractor shall provide professional services in accordance with the Order. Contractor will begin a Project Set-Up only after receipt of electronic plans from the architect of the Project in an acceptable format. Thereafter, Contractor requires at least ten (10) business days for Project Set-Up *prior to the first shoot* contemplated by the Order.
- 2) **DETAILED PHOTO SETS**: Because of the volatile nature of construction schedules, IT IS THE SOLE RESPONSIBILITY OF THE ORDERING ACTIVITY TO PROVIDE CONTRACTOR AT LEAST 24 HOURS NOTICE PRIOR TO THE TIME THAT A DETAILED SET MUST BE PERFORMED. To the extent look-ahead schedules are made available to Contractor, Contractor will endeavor to communicate with the Project owner’s representative or superintendent regarding upcoming Detailed Set shoots. However, Contractor will not be responsible if such Detailed Sets are not performed due to lack of notice pursuant to this provision.
- 3) **AGENT/OWNER’S REPRESENTATIVE**: Ordering Activity must designate a specific person or persons authorized to and responsible for scheduling site visits and Detailed Shoots.
- 4) **STANDARD OF CARE**: Services provided by Contractor under this Attachment A will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor makes no warranties or guarantees, either expressed or implied, of the fitness of its documentation for any particular use.
- 5) **OWNERSHIP OF DOCUMENTS**: Contractor makes no warrants as to the professional nature of the photograph other than to capture the construction progress. Notwithstanding the foregoing, the underlying proprietary software, processes, procedures and all other proprietary information used to create these instruments of service, including all intellectual property rights associated therewith, shall at all time remain the sole property of Contractor and/or its suppliers.
- 6) **SITE VISITS/OBSERVATION**: Contractor shall visit the project and/or construction site at appropriate intervals and take photos of the construction progress. Visits to the project site and observations made by Contractor as part of services provided during construction under this Attachment A shall not make Contractor responsible for monitoring of the work.

Contractor employees will report to the site office prior to working on site. The site superintendent shall be the designated person granting permission onto the site in order to ensure safe access for Contractor employees.

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NEC Corporation of America
9140 Guilford Road
Columbia, MD 21046

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

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

NEC CORPORATION OF AMERICA ("NEC")

NEC CORPORATION OF AMERICA LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

1.01 "CPU" means a central processing unit in the System or SubSystem.

1.02 "Computer Program" means any instruction or instructions in object-code format for controlling the operation of a CPU.

1.03 "Licensed Product" means:

a: The Computer Program furnished hereunder to the Ordering Activity (herein also referred to as "LICENSEE").

b: The Computer Program manuals, documentation and any other material for the licensed Computer Program.

c: (i) "PBX" as used herein shall mean hardware PRODUCTS. (ii) "PBX Applications" as used herein shall mean computer software which executes in conjunction with the PBX hardware PRODUCTS utilizing external interfaces and include the following applications.

- Global Navigator
- Unified Communications for Business (UCB)
- Unified Communications for Enterprise (UCE)
- UM Products (UM8700, UM4730, UM8500, UM8000)

d: (i) "ECP" as used herein shall mean UNIVERGE® SV7000, UNIVERGE® SV8500 and NEC Spherical® hardware PRODUCTS. (ii) "Applications" as used herein shall mean PBX Applications as defined in Section 1.03 (c) above.

THE TERM "LICENSED PRODUCT" DOES NOT MEAN OR INCLUDE THE SOURCE CODE FORMAT FOR THE COMPUTER PROGRAM.

2. GRANT OF RIGHTS

2.01 Contractor hereby grants the LICENSEE, and the LICENSEE hereby accepts, a personal, non-transferable and non-exclusive right to use the Licensed Product on 1 CPU at a time, or a single system where multiple CPU's are provided in the configuration, solely for its internal business purposes. The LICENSEE understands that the Licensed Product furnished to the LICENSEE is furnished solely for use in conjunction with the related hardware Licensed PRODUCTS sold by Contractor to LICENSEE. The LICENSEE has no right to use the Licensed Product so furnished on any CPU other than that such CPU or for any purpose not specified herein.

2.02 LICENSEE and Contractor expressly acknowledge and agree that NEC and/or NEC's licensors retain ownership of and title to their respective portions of the License Product and no right, title or interest to the intellectual property in the Licensed Product is hereby transferred to the LICENSEE or Contractor, except as expressly granted herein.

2.03 The LICENSEE shall not transfer possession of the Licensed Product, nor any rights conferred herein to any third party, except to a third party who acquires title to the LICENSEE'S related hardware Licensed PRODUCTS, provided such transferee has executed and provided to NEC, a signed copy of this Attachment A and has tendered to NEC, the then-current license transfer fee.

2.04 LICENSEE hereby agrees that it shall not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Product, except to the extent that such modification capability is an intended feature of the Licensed Product.

3. LIMITED WARRANTY AND REMEDIES

3.01 a: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the PBX and the UNIVERGE® SV8500 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

b: For a period of 120 days from date of shipping to LICENSEE's site, Contractor warrants that the UNIVERGE SV8500 software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

c: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the Applications software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

d: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV7000 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

e: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the NEC Spherical® PRODUCTS software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

f: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV8500 hardware and the NEC Spherical® hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

g: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the Unified Communications Enterprise (UCE), Unified Communications Business (UCB), CallCenterWorX and Global Navigator software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

h: For a period of 180 days from date of shipping to the LICENSEE'S, Contractor warrants that the Unified Messaging (UM8700, UM4730, UM8500, UM8000) software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

3.02 Contractor's liability for any Licensed Product which is shown to be defective during its warranty period is limited to:

a: replacing the Licensed Product or part thereof with a functionally equivalent Licensed Product or part,

b: repairing the Licensed Product, or

c: issuing credit for the depreciated value of the Licensed Product

The choice of which of the above warranty remedies to utilize concerning any particular Licensed Product shall be Contractor's.

3.03 In the event that any Licensed Product is shown to be defective during the warranty period, the LICENSEE, who purchased or leased such Licensed PRODUCTS, shall:

a: notify Contractor promptly in writing of any claims,

b: provide Contractor and/or NEC, with an opportunity to inspect and test the Licensed PRODUCTS claimed to be defective, and

c: (if repair or replacement of the Licensed Product is selected) return the Licensed Product to Contractor or NEC, in accordance with instructions provided.

3.04 The above warranty excludes coverage for Licensed PRODUCTS which were installed, repaired or maintained by an unauthorized service provider or which were subjected to misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (including, but not limited to, lightning or water damage), storage, transportation or handling, unless caused by NEC or its authorized representative.

3.05 THE LICENSED PRODUCT WARRANTY CONTAINED IN THIS ATTACHMENT A IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SOFTWARE PRODUCTS.

4. TERMINATION

4.01 Upon termination, the LICENSEE shall immediately discontinue the use of the Licensed Product and shall return all copies of the Licensed Product to Contractor.

5. REGISTRATION AND ACTIVATION

5.01 PRODUCT LICENSES delivered through the electronic licensing portals offered by NEC will be required to be registered and activated prior to the licenses being used or technical support being provided.

5.02 At the time of LICENSE registration, the Contractor is required to provide NEC with accurate LICENSEE contact information.

NetScout Systems, Inc.
310 Littleton Road
Westford, MA 01886

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

1. **Scope.** This Rider and the attached **NetScout Systems, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - 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**

NETSCOUT SYSTEMS, INC.

NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in Section 8.

"Hardware" means hardware products generally available on the schedule price list.

"Maintenance" means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

"Pre-Released Products" shall have the meaning set forth below in Section 8.

"Product" means Software and Hardware provided by Contractor through NetScout.

"Quotation" means the document under which Contractor offers for sale and license its Products, Maintenance, and associated services.

"Service Provider" means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

"Software Development Kit" or "SDK" means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in Section 8.

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

"You" or "Your" means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You.

Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to:

- i. copy or reproduce any part of the Software or Documentation, except as permitted above;
- ii. transfer the Software without Contractor's prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies;
- iii. sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or
- iv. modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event You are purchasing an Enterprise License and if You use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) Contractor will not warrant the performance or results obtained by using the Enterprise License Software and Contractor disclaims all liability with respect to the foregoing, (ii) You assume the risk as to the results and performance of the Enterprise License Software, and (iii) Your rights and Contractor's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Contractor that all of the foregoing have been destroyed.

4. Limited Warranty. Contractor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("Media Warranty Period"). Contractor warrants that the Software for a period of 90 days ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in either case from its original date of shipment or when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor's return process.

5. **Warranty Limit.** The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor's reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that Products are appropriate for Your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. **Outsourcing.** Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. **U.S. Government Restricted Rights.** All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. **Additional Terms and Limitations for Unsupported Products.**

(a) **Evaluation Products.** Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) **Pre-Released Product.** Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has not promised or guaranteed to You that the Pre-Released Product will be announced or made available to anyone in the future; (ii) Contractor has no express or implied obligation to You to announce or introduce the Pre-Released Product; and (iii) You understand that Contractor may not introduce a product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. If You have been provided the Pre-Released Product pursuant to a separate written agreement, Your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, You agree to return or destroy all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) **APIs.** Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with

products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(d) **Unsupported Products.** If the product You have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively "Unsupported Products"), then You acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict Your access to parts or all of Pre- Released and SDK Products. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor may develop software programs substantially similar or identical to those developed by You through Your use of the SDK and reserves the right to sell and distribute those software programs.

9. **Product Returns.** Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach- Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre- Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES

1. **Maintenance Descriptions.** Contractor through NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions. Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the Hardware Coverage Period.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services includes: 24x7 access to technical support engineers; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the Coverage Period; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout's user forum conference; and registered access to the MasterCare portal. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf.

B. **Gold Support.** Subject to the terms herein and for existing Ordering Activities who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; and registered access to the MasterCare portal. 72-hour return repair on Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.

C. **Supplemental Maintenance Offerings.** Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

➤ **OnSite Engineer Services.** Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: (i) installation of operating system and Software upgrades; (ii) Hardware maintenance, Software patches,

and service pack installation, and (iii) oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Ordering Activity holidays and paid time off, provided the number of Ordering Activity holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. For a maximum period of two weeks during the initial term and renewal terms, the onsite engineer will not be at Ordering Activity's designated site performing the OSE Services due to training at NetScout's corporate headquarters.

➤ **Remote Site Engineer Services.** Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

➤ **Technical Account Manager Services.** Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing weekly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity's NetScout environment; providing monthly NetScout server "health checks" to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

2. Term and Renewal. Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 12 months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product.

3. Continuing Availability. If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

4. Substitutions; Software Updates. Contractor through NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

5. Warranty. Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity's remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

6. Limitations and Exclusions. Contractor through NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of Ordering Activity or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current GSA price.

7. **Repairs.** A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, Ordering Activity must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

8. **Ordering Activity Obligations.**

A. **Access to Products.** Ordering Activity will grant the Contractor through NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally during any OSE Services term, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products ("Office Area"), and (ii) designate an employee of Ordering Activity to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

B. **MasterCare Support Coverage for Products.** OSE, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of Ordering Activity.

Network Critical, Inc.
37 Franklin Street, Suite 100
Buffalo, NY 14202

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

1. **Scope.** This Rider and the attached **Network Critical, 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**

NETWORK CRITICAL

NETWORK CRITICAL LICENSE, WARRANTY AND SUPPORT TERMS

Return to Factory Warranty Terms & Conditions

Overview

The Return to Factory Warranty is an agreement for NETWORK CRITICAL customers which provides the replacement of products and accessories should there be a manufacturing defect in the product. There is no charge for this service for 12 months from the date of purchase, and coverage may be renewed on an annual basis thereafter for a fee.

Services

Subject to the provisions described below, this NETWORK CRITICAL product is protected for one (1) year from the date of purchase against defect in material and workmanship.

Open a Support Case Online:

www.networkcritical.com > Support Tab > Open a Support Case

North and South America Technical Support Office

8 AM – 8 PM (EST) Monday – Friday (except for observed US Holidays)

+1 (716) 558-7280

support@networkcritical.com

UK/Europe, Africa and Asia Technical Support Office

3 AM – 12 PM (EST) Monday – Friday (except for observed UK Holidays)

+44 (0) 1189 543210

support@networkcritical.com

If a product should prove to have a defect in material or workmanship and fail to perform within the warranted period, it will be repaired or replaced with the same or functionally equivalent product by Contractor through NETWORK CRITICAL at its discretion, free of charge, provided the Ordering Activity: (1) Returns the product to a NETWORK CRITICAL designated repair facility, and (2) provides NETWORK CRITICAL with proof of the original date of purchase. Repaired or replaced products will be returned to you via ground service by common carrier with the shipping charges prepaid. Replacement products may be refurbished or contain refurbished materials. This process is typically completed within 5-10 business days.

Benefits

Ordering Activities with a Return to Factory Warranty will have limited access to the NETWORK CRITICAL support team during business hours for basic technical assistance. Support issues for Return to Factory Warranty customers will be handled on a first come, first served basis.

To receive full support benefits, such as unlimited support access, network design services, remote configuration and many more benefits, Gold Support should be purchased.

Terms of Agreement

For this Return to Factory Warranty to be valid, the following conditions must be met:

1. This Return to Factory Warranty is not transferable to a new owner, even if this hardware or software has been resold.
2. If a product is currently out of warranty and the Ordering Activity wishes to have it covered, the product must be deemed "warranty supportable" by a NETWORK CRITICAL authorized service center before it will be eligible for coverage under this agreement.
3. Any product (hardware or accessory) that has been abused or "worn out" due to normal usage does not qualify for service or benefits under the Return to Factory Warranty. Contractor through NETWORK CRITICAL reserves the right to determine if the cause of failure is due to abuse of the product. Should NETWORK CRITICAL determine that the product failure is due to abuse, any services or benefits of this Return to Factory Warranty will be null and void and future coverage will be denied, unless the product has undergone repair by an authorized NETWORK CRITICAL service repair facility. Abuse includes (but is not limited to) damage resulting from dropping the unit, misuse of the product or neglect.

Except as specifically provided in this agreement or as required by law, the warranties stated above are exclusive and in lieu of all others, oral or written, express or implied. Any or all other warranties expressly excluded.

GOLD SUPPORT WARRANTY TERMS & CONDITIONS

Overview

The Gold Support Program is a paid service agreement for NETWORK CRITICAL customers which provides a range of services and benefits not available without the paid service agreement. The Gold Support Service entitles the holder to the services and benefits listed for the products covered by this agreement. The Gold Support Service will remain in effect for 12 months from the date the agreement is purchased or for the dates supplied on the quote for this service agreement. The Gold Support Service can be renewed annually or other time arrangements can be made to renew all products at the same time.

Services

Ordering Activities with Gold Support Service are entitled to unlimited access to NETWORK CRITICAL technical support (during stated business hours). Business hours for NETWORK CRITICAL Technical Support Centers are as follows:

Open a Support Case Online:

www.networkcritical.com > Support Tab > Open a Support Case

North and South America Technical Support Office

8 AM – 8 PM (EST) Monday – Friday (except for observed US Holidays)

+1 (716) 558-7280

support@networkcritical.com

UK/Europe, Africa and Asia Technical Support Office

3 AM – 12 PM (EST) Monday – Friday (except for observed UK Holidays)

+44 (0) 1189 543210

support@networkcritical.com

If hardware is deemed defective or faulty by a NETWORK CRITICAL Technical Support Center, the Gold Support Service entitles the holder to immediate exchange of the product at no charge. Exchange units will be new or refurbished (guaranteed good as new) at the option of Contractor through NETWORK CRITICAL. The model exchanged will be the same unit covered by this agreement. The faulty hardware must be returned to NETWORK CRITICAL within ten (10) business days of receipt of the repaired/serviced equipment.

Any faulty or defective accessories that were shipped with the product and are considered essential to the operation of the hardware are covered under the Gold Support Service provided that the Technical Support Center has approved its return and the accessory is returned to Contractor through NETWORK CRITICAL for evaluation.

Benefits

Ordering Activities with Gold Support Service will have unlimited access to the NETWORK CRITICAL support team during stated business hours and will receive priority handling of their technical issues. The NETWORK CRITICAL support team will also be able to provide network design services, Visio diagrams with suggested commands and setups and remote configuration of products through Go-To-Meeting.

Gold Support customers will receive access to a customized web portal to view the status of their support cases. Instructions for access will be supplied to the Gold Support customer as a part of their Gold Support Service package. Products covered under the Gold Support Service will be eligible for all Firmware and Software updates available for the covered products during the covered period at no charge. Gold Support customers will receive priority notification when new firmware or features are available for covered products.

Terms of Agreement

For Gold Support Service to be valid, the following conditions must be met:

1. This Gold Support Service terms are not transferable to a new owner, even if this hardware or software has been resold.
2. If a product is currently out of warranty and the Ordering Activity wishes to have it covered, the product must be deemed "warranty supportable" by a NETWORK CRITICAL authorized service center before it will be eligible for coverage under this Attachment A.
3. Any product (hardware or accessory) that has been abused or "worn out" due to normal usage does not qualify for service or benefits under the Gold Support Service. Contractor through NETWORK CRITICAL reserves the right to determine if the cause of failure is due to abuse of the product. Should Contractor through NETWORK CRITICAL determine that the product failure is due to abuse, any services or benefits of this Attachment A will be null and void and future coverage will be denied, unless the product has undergone repair by an authorized NETWORK CRITICAL service repair facility. Abuse includes (but is not limited to) damage resulting from dropping the unit, misuse of the product or neglect.

Nuance Communications, Inc.
One Wayside Road
Burlington, MA 01803

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

1. **Scope.** This Rider and the attached **Nuance 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**

NUANCE

NUANCE LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions. As used in this Attachment A, the following defined terms have the meanings indicated below.

"*Authorized User(s)*" are those employees and contractors of Ordering Activity, as further specified in the Order, who are permitted to access the Programs subject to the terms and restrictions contained in this Attachment A and the Order.

"*Documentation*" means the administrative guide and user's guide provided to Ordering Activity in the performance of the Order.

"*Equipment*" means hardware manufactured by Nuance and supplied to Ordering Activity pursuant to the Order. Except as expressly provided by this Attachment A or the Order, "Equipment" does not include Third Party Equipment.

"*First Productive Use*" means the date Nuance has completed the Professional Services set forth in the Order related to the installation of the Product(s) and, therefore, capable of processing data in Ordering Activity's commercial environment.

"*Maintenance Services*" are those services Nuance provides with respect to the maintenance and support of the Programs pursuant to this Attachment A.

"*Order*" means any and all delivery, task, purchase or other orders for the Products and/or Services and may include the ISO.

"*Products*" means the Programs (or licenses thereto) and Equipment, collectively.

"*Professional Services*" shall mean those services, other than Maintenance Services and Training Services, to be provided by Nuance pursuant to the Order.

"*Programs*" means (i) the object code version of any Nuance proprietary software product specified in the Order, (ii) all Updates and Upgrades thereto, (iii) any customized features and functions provided by Nuance pursuant to this Attachment A, and (iv) all related Documentation. Except expressly stated to the contrary, "Program" does not include Third Party Software.

"*Services*" means Professional Services, Training Services and/or Maintenance Services, as applicable.

"*Third Party Equipment*" means hardware that is not manufactured by Nuance.

"*Third Party Software*" means software proprietary to a third party.

"*Training Services*" means the training services provided by Nuance pursuant to Section 5.b of this Attachment A.

"*Update*" means a release of a Program that may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections and typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). "Update" shall not be construed to include Upgrades.

"*Upgrade*" means a release of the Program that may include some feature enhancements and/or additional capabilities (functionality) over versions of the Programs previously supplied to Ordering Activity, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0) For clarification purposes,

"Upgrade" shall not be construed to include either a release that contains major new feature enhancements or a release that contains major new capabilities such that, in either case, Nuance, in its sole discretion, deems such release to constitute a new product or substantial extension of the product line.

2. Scope of Agreement.

Subject to the terms and conditions of this Attachment A, Contractor shall supply to Ordering Activity the Products, Third Party Software, Third Party Equipment, and/or Services specified by the Order.

3. Grant of License; Limitations; Other Restrictions.

- a. *License Grant.* Subject to the terms and conditions of this Attachment A, Contractor hereby grants Ordering Activity a non-exclusive, non-transferable license to allow the Authorized Users to utilize the Programs specified by the Order in a manner commensurate with their intended use and solely for Ordering Activity's internal business purposes.
- b. *Limitations and Restrictions.* Ordering Activity agrees that it shall not, and shall not permit the Authorized Users, other employees, contractors, or any third party to (i) duplicate the Programs for any purpose other than for archival and disaster recovery purposes, (ii) reverse engineer, disassemble, decompile or translate the Programs; (iii) change, modify or otherwise alter the Programs, (iv) assign, transfer, pledge, rent, share or sublicense any of the Programs without Contractor's prior written consent; (v) grant any third party access to or use of the Programs on a service bureau, timesharing or application service provider basis or otherwise, or (vi) defeat or circumvent any controls or limitations the Program places on its use.
- c. *Notice of Unauthorized Use.* Ordering Activity shall notify Contractor of the unauthorized possession or use of any Program item supplied under this Attachment A by any third party not authorized by this Attachment A to have such possession immediately upon its obtaining of any knowledge or notice thereof.

4. Equipment. Subject to the terms and conditions of this Attachment A, Ordering Activity shall purchase Equipment and/or Third Party Equipment from Contractor in the quantity and at the price set forth in the Order.

5. Professional Services; Training Services.

- a. *Provision of Professional and Training Services.* Subject to the terms and conditions set forth in this Attachment A, Contractor through Nuance will provide such Professional and Training Services as may be specified by the Order.
- b. *Training Services.*
- (i) Unless otherwise agreed to by the parties hereto, all training sessions scheduled hereunder will be held at a designated Nuance location during Nuance's standard business hours excluding Nuance recognized holidays. In the event the parties agree to hold training sessions at Ordering Activity's site, all such sessions (including travel time) will occur during the hours of 8:00 a.m. to 5:00 p.m. local End User site time, Monday through Friday, excluding Nuance recognized holidays.
 - (ii) Ordering Activity shall ensure that (a) all training session attendees are Authorized Users and (b) said Authorized Users have the necessary skill and experience to participate in the training sessions. Contractor through Nuance shall have the right to request that any attendee who, in Nuance's reasonable judgment, is found not to have the requisite skill and experience (i.e., does not have a working knowledge of the applicable operating system) be removed from training sessions.
- c. *Rescheduling of Professional Services or Training Services.* Ordering Activity agrees to reimburse Contractor for any actual incurred costs (e.g., airline ticket deposits, etc.) as a result of any rescheduling or cancellation of Professional Services or Training Services at least 72-hours prior to the scheduled start of such Services provided the cancellation is not due to a breach by Nuance.
- d. *On-Location Professional Services or Training Services.* If the Order contemplates that Contractor through Nuance will perform Services at any location other than Nuance's facilities, Ordering Activity shall provide or arrange for the necessary equipment, information, and facilities specified by Nuance to Ordering Activity.

6. Maintenance Services.

- a. *Scope.* For an initial term of one (1) year following completion of the Professional Services related to the installation of the Products and Third Party Software (if applicable) at Ordering Activity's location (the "Initial Service Term"), Contractor through Nuance shall provide the Maintenance Services selected by Ordering Activity in the Order. Unless otherwise agreed, Maintenance Services with respect to any Program shall apply to all copies of the Program licensed to the Ordering Activity. All Maintenance Services shall be provided subject to Nuance's Hardware and Software Maintenance Options, Terms and Conditions as described in this Attachment A.
- b. *Exclusions from Maintenance Services.* Unless otherwise agreed, Contractor through Nuance shall not be obligated to provided Maintenance Services for, or required as result of (i) any Product modified by anyone other than Nuance, (ii) any Product used for other than its intended purpose, (iii) any Product used with any Third Party Equipment not specified as compatible with said Product in the Product's Documentation, (iv) any Product being used with Third Party Software not supplied or specified by Nuance, (v) any Product (including any associated equipment, software or firmware) which the Ordering Activity failed to properly install or maintain, (vi) any willful or negligent action or omission of Ordering Activity, (vii) any computer malfunction not attributable to the Products (viii) damage to Products from any external source including computer viruses unattributable to Nuance, computer hackers, or force majeure events.

7. Ordering Activity's Obligations. Ordering Activity shall timely perform the obligations imposed on it by this Attachment A and each Order. In addition, Ordering Activity agrees as follows:

- a. *Data Preservation.* Ordering Activity will create and preserve reasonable backup copies of its data and other business information and records, perform accuracy checks on a routine basis, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to Ordering Activity's computer systems.
- b. *Speech Recognition.* THE ORDER ACTIVITY ACKNOWLEDGES THAT SPEECH RECOGNITION IS A STATISTICAL PROCESS, ERRORS ARE INHERENT IN SUCH PROCESS, AND APPLICATIONS EMPLOYING SUCH PROCESS ARE DESIGNED TO ALLOW FOR SUCH ERRORS. THE ORDERING ACTIVITY ACKNOWLEDGES THAT SUCH ERRORS ARE

INEVITABLE AND AGREES THAT IT IS THE RESPONSIBILITY OF THE ORDERING ACTIVITY TO IDENTIFY AND CORRECT ANY SUCH ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SPEECH RECOGNITION SOFTWARE PROGRAM LICENSED HEREUNDER. THE ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT CONTRACTOR DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND THAT THE ORDERING ACTIVITY'S USE OF THE PROGRAM DOES NOT ABSOLVE THE ORDERING ACTIVITY OF ITS OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. THE END USER ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICES LIES SOLELY WITH THE ORDERING ACTIVITY. THE ORDERING ACTIVITY AGREES THAT ANY RELIANCE UPON THE PROGRAMS SHALL NOT DIMINISH THE ORDERING ACTIVITY'S RESPONSIBILITY FOR PATIENT CARE.

c. *End User Data.* In order to continually improve the quality of speech recognition of the Programs, Ordering Activity shall provide Contractor through Nuance access to voice and text data residing on the Products located at Ordering Activity's installation site and grants Nuance a perpetual, royalty-free license to copy, use and analyze such data for speech recognition research. All Products created in whole or part using said data in accordance with the restrictions set forth in this section shall be and remain the sole property of Nuance.

8. Ownership and Proprietary Rights. Except for the limited licenses granted pursuant to this Attachment A, the terms of Attachment A do not convey any ownership or other rights of any kind to Ordering Activity in or to the Programs, and any Updates or Upgrades thereto. Nuance, as between Nuance and Ordering Activity, shall own all right, title and interest in and to all Programs (including, without limitation, all Updates, Upgrades, improvements, enhancements, and/or custom features and functions) and all patents, copyrights and other intellectual property rights therein. Effective on delivery of each Update or Upgrade to Ordering Activity, Nuance shall be deemed to have granted Ordering Activity a license to use such Update or Upgrade in conjunction with the Program to which such Update or Upgrade relates subject to the terms of this Attachment A.

9. Limited Warranties.

a. *Title Warranties.* Contractor warrants that it has sufficient right, title and interest in the Programs to grant the licenses contemplated by this Attachment A, and that the Equipment will be free and clear of all liens and encumbrances when and as delivered.

b. *Program Warranty.* Contractor warrants that, upon the initial installation (in the case of Programs that, pursuant to the Order, are to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Programs shall conform in all material respects to the applicable Documentation.

c. *Equipment Warranty.* Contractor warrants that, upon the initial installation (in the case of Equipment that, pursuant to the Order is to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Equipment shall conform in all material respects to the applicable specifications.

d. *Services Warranty.* Contractor warrants that the Services provided by Nuance pursuant to this Attachment A shall be of a competent and professional quality and performed in a competent and professional manner.

e. *Limitation of Warranties.* The aforementioned warranties of Sections 9.a – 9.d shall not apply, and Contractor shall have no warranty obligation or liability with respect to (i) any Product that is damaged through no fault of Nuance, (ii) any Product that is modified by anyone other than Nuance, (iii) any Product that is used for any purpose other than its intended purpose, (iv) any Product that is used with Third Party Equipment not specified as compatible with said Product in the Product's Documentation, (v) any Product that is used with Third Party Software not specified as compatible with said Product in the Product's Documentation, (vi) any Product the Ordering Activity fails to properly install or maintain, (vii) any Product that is misused by any party other than Nuance, (viii) any computer malfunction not attributable to the Products or Nuance, (ix) any incorrect use of the Products by any party other than Nuance, or (x) any willful or negligent action or omission of Ordering Activity. THE EQUIPMENT MAY CONTAIN RECYCLED, REMANUFACTURED OR RECONDITIONED COMPONENTS, WHICH COMPONENTS ARE WARRANTED AS NEW. As Ordering Activity's remedy in the event of any warranty claim hereunder, Contractor, during the foregoing respective warranty periods at its option, will make reasonable efforts to correct or cure such nonconformity, defect, contaminant or breach; or replace such Products in lieu of curing such nonconformity, defect, contaminant or breach.

f. *Disclaimer.* WITH THE EXCEPTION OF THE WARRANTIES EXPRESSLY SET FORTH IN THIS ATTACHMENT A, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY EQUIPMENT. Contractor's obligation with respect to such Third Party Software and Third Party Equipment shall be to make commercially reasonable efforts to assist Ordering Activity to enforce the warranties extended by the producer of the applicable Third Party Software or Third Party Equipment, if any.

10. US Government End Users. This section applies to all acquisitions of Programs and/or Third Party Software (collectively or individually for the purposes of this section, the "Government Acquired Products") by or for the government of the United States of America (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. By accepting delivery of the Government Acquired Products, the Federal Government hereby agrees that this software qualifies as "commercial" computer software within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Attachment A shall pertain to the Federal Government's use and disclosure of the Government Acquired Products, and shall supercede any conflicting contractual terms or

conditions. If this Attachment A fails to meet the Federal Government's needs or is inconsistent in any respect with United States law, the Federal Government agrees to return the Government Acquired Products unused. The following additional statement applies only to acquisitions by the Federal Government that are 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 – Noncommercial Items clause at DFARS 252.227-7013 (1995)."

EXHIBIT 1 – VERIPHY PRODUCTS AND SERVICES

1. Definitions. For purposes of this Exhibit 1, the following capitalized terms shall have the following meanings:

"Active Clinician" means a clinician who is eligible to receive diagnostic exam results and notifications thereof from Ordering Activity's diagnostic departments by means of the licensed Veriphy Product and Services.

"Fees" means the fees set forth on the Order.

"Fee Payment Schedule" means the payment schedule set forth on the Order.

"First Productive Use" means the date upon which the following tasks have been completed: (i) the setup of the Veriphy website, (ii) establishment of Ordering Activity specific toll free numbers, (iii) the loading of Active Clinician Directory during Ordering Activity setup with data collected by Nuance and/or supplied by Ordering Activity, and (iv) the Program is capable of processing data.

"Active Clinician Directory" means a database of Active Clinicians and their respective contact information (at a minimum: first name, last name, primary phone number, address and fax number).

"Service Term" means the term of the license to the Veriphy Products and Services granted pursuant to the Order.

"Veriphy Products and Services" means the critical test result management solution set forth on the Order.

2. Grant of Rights. Subject to the terms and conditions of this Attachment A, including payment of the Fees in accordance with the Fee Payment Schedule, Ordering Activity is granted the right and license, during the Service Term and solely for the internal business purposes of Ordering Activity, and not for resale, to allow Authorized Users to access and use the Veriphy Products and Services, as hosted on Nuance's data processing facility, over the Internet. The license grant includes a revocable, non-exclusive and non-transferable license to install and use certain components of the Veriphy Products and Services, in object code form only, on Ordering Activity owned hardware, as specified by Nuance in the Documentation, solely to facilitate Ordering Activity's remote access to the Veriphy Software and Services, as hosted on Nuance's data processing facility, during the Service Term. The license to the Veriphy Products and Services is granted solely for its intended purpose of use in accordance with the specifications set forth in the Documentation. Ordering Activity shall not permit any third party to use the Veriphy Products and Services.

3. Ordering Activity's Obligations.

- a. Ordering Activity agrees to appoint a project manager within seven (7) days upon entering into an Order to oversee the Veriphy project.
- b. Ordering Activity is responsible for: (i) taking all appropriate action, by instruction, agreement or otherwise, with its Authorized Users, to satisfy its obligations with respect to use, protection and security of the Veriphy Products and Services and any of Ordering Activity's own patient data confidentiality requirements; and (ii) ensuring that the Authorized Users are advised and understand that the Veriphy Products and Services is an aid in the practice of healthcare and is not a substitute for professional judgment.
- c. Ordering Activity shall be solely responsible for acquiring, operating and maintaining all hardware and software with respect to Ordering Activity's use of the Veriphy Products and Services. Contractor through Nuance shall have no responsibility for any costs incurred in connection with modifications or enhancements to Ordering Activity's system necessary for implementing Ordering Activity's interface with the Veriphy Products and Services or in connection with Ordering Activity's use of the Veriphy Products and Services.
- d. Ordering Activity shall be solely responsible for ensuring that all messages created by Ordering Activity's Authorized Users are retrieved in a timely manner by the Active Clinician who ordered the test.

4. Maintenance Services.

Maintenance Services for Veriphy Products and Services will be provided during the Service Term in accordance with Option I of the "Hardware and Software Maintenance Options" terms and conditions as described in this Attachment A.

5. Active Clinician Directory. Once per calendar year, Ordering Activity may request to have the Active Clinician Directory updated by adding and removing named Active Clinicians and their respective contact information, provided such information be provided to Contractor through Nuance in electronic format in either database or spreadsheet format.

6. Service Term. The initial Service Term shall be as set forth in the Order, which Service Term shall begin upon First Productive Use or one hundred eighty (180) days following the Ordering Activity entered into an Order, whichever occurs first.

EXHIBIT 2 – DRAGON MEDICAL ENTERPRISE NETWORK EDITION: PROVIDER-PLUS ENTERPRISE SITE LICENSE

1. **Definitions.** For purposes of this Exhibit 2, the following capitalized terms shall have the following meanings:
 - “**Actual Physician Count**” means the total number of Physicians that Ordering Activity has, throughout all of its Healthcare Facilities, on the applicable anniversary of the date of the Order.
 - “**Annual Report**” means a report indicating the total number of Physicians that Ordering Activity has, throughout all of its Healthcare Facilities, on each annual anniversary of the date of the Order.
 - “**Applicable Software**” means the *Dragon Medical Enterprise Network Edition* (DMENE) Program specified in an Order as being licensed pursuant to the “Provider-Plus Enterprise Site License” License Model; and which Program requires Ordering Activity to have a valid licensed copy of NMS Software.
 - “**Authorized User**” is as defined below in Section 2 of this Exhibit 2.
 - “**Baseline Physician Count**” means the number of Physicians covered by the Enterprise Site License. The Baseline Physician Count is as initially specified in the Order, and as subsequently augmented pursuant to Section 4 of this Exhibit 2.
 - “**Device**” means a personal computing device as specified in the accompanying Documentation.
 - “**Healthcare Facility**” means each hospital, physician office, outpatient center, surgical facility, and any other facility delivering healthcare services, that is wholly owned or controlled by Ordering Activity. For purposes of this definition, “control” means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.
 - “**License Conversion**” means a voluntary exchange for a license to use the Applicable Software subject to the terms of the General Terms and Conditions and this Addendum, in lieu of a license previously obtained by Ordering Activity to use the Replaced Product, provided such an option to exchange is made available by Nuance, at Nuance’s sole discretion.
 - “**NMS Software**” means Nuance’s proprietary *Nuance Management Server* software product.
 - “**Non-Physician**” means a person who is not a Physician (including, but not limited to, a nurse, physician assistance, or psychologists).
 - “**Physician**” means a person who is a physician (including, but not limited to, a full-time or part-time physician, resident, attending physician, Physician with Privileges, M.D., or D.O.) working on behalf of Ordering Activity.
 - “**Physician with Privileges**” means a physician not employed by Ordering Activity, but who has been granted rights to admit patients to a Healthcare Facility for providing medical services to such patient at such Healthcare Facility.
 - “**Replaced Product**” means a Nuance software product that Ordering Activity previously obtained a license to use (either from Nuance directly or from a Nuance authorized reseller), and for which, Ordering Activity can show proof of entitlement to such license.
2. **Grant of Rights.** Subject to the terms and conditions of this Attachment A, this Exhibit 2 and the Order, Contractor hereby grants Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to allow all Physicians and Non-Physicians at all of its Healthcare Facilities (each such Physician and Non-Physician, an “Authorized User”) to use the Applicable Software in conjunction with a valid licensed copy of the NMS Software (such license, the “Enterprise Site License”); provided such use is: (i) in a manner commensurate with its intended use (as prescribed by the Documentation), and (ii) solely for Ordering Activity’s internal business purposes. Ordering Activity shall not allow any Authorized User to use the Applicable Software for: (a) the Authorized User’s own personal use, or (b) the benefit of any third party. Ordering Activity shall not allow anyone other than the Authorized Users to use the Applicable Software. Pursuant to the rights granted under this Section 2, Ordering Activity may reproduce and install as many copies of the Applicable Software on as many Devices as is reasonably necessary to exercise its license rights under this Section 2. All such copies must be true and complete copies (including intellectual property notices) and be made from media or files supplied by Nuance to Ordering Activity under this Attachment A or from a network source if true and complete copies of such media or files supplied by Nuance are copied to the network source.
3. **Enterprise Site License Fee.** The license fee for the Enterprise Site License (the “Enterprise Site License Fee”) is calculated based on the aggregate number of Physicians located at all of Ordering Activity’s Healthcare Facilities, as initially specified in the Order. The Enterprise Site License Fee does not provide for Maintenance Services, which are charged for separately.

4. License Conversion. If the Applicable Software is identified on the Order as being a "License Conversion," then by Ordering Activity installing the Applicable Software obtained pursuant to such Order, Ordering Activity's rights to the Replaced Product terminates, except that if the Replaced Product was licensed to Ordering Activity by a Nuance authorized reseller, then Ordering Activity's rights to the Applicable Software is subject to Ordering Activity first terminating its license rights with respect to the Replaced Product. At the time of installation of the Applicable Software, Ordering Activity shall un-install, and return to Nuance (or the Nuance authorized reseller from which Ordering Activity obtained the Replaced Product) or destroy, all copies of the Replaced Product, which were the basis for Ordering Activity's eligibility for the License Conversion, and certify to Nuance, in writing, that Ordering Activity has done so.

EXHIBIT 3 – DRAGON MEDICAL ENTERPRISE NETWORK EDITION: PROVIDER-PLUS LOCATION SITE LICENSE

1. **Definitions.** For purposes of this Exhibit 3, the following terms shall have the following meanings:

- "**Applicable Software**" means the *Dragon Medical Enterprise Network Edition* (DMENE) Program specified in an Order as being licensed pursuant to the "Provider-Plus Location Site License" License Model; and which Program requires Ordering Activity to have a valid licensed copy of the NMS Software.
- "**Authorized User**" is as defined below in Section 2 of this Exhibit 3.
- "**Device**" means a personal computing device as specified in the accompanying Documentation.
- "**License Conversion**" means a voluntary exchange for a license to use the Applicable Software subject to the terms of the General Terms and Conditions and this Addendum, in lieu of a license previously obtained by Ordering Activity to use the Replaced Product, provided such an option to exchange is made available by Nuance, at Nuance's sole discretion.
- "**Location**" means each hospital and other healthcare facility listed on the Order, and only includes that portion of each such listed hospital and/or other healthcare facility that is located at the physical address stated in the Order as of the date of the Order. "Location" does not include (i) a new facility or physical structure erected at a physical address listed on the Order, or (ii) a physical structure added to a hospital or other healthcare facility listed on the Order (e.g. additional floors or a wing added to a physical structure), after the date of the Order.
- "**NMS Software**" means Nuance's proprietary *Nuance Management Server* software product.
- "**Non-Physician**" means a person who is not a Physician (including, but not limited to, a nurse, physician assistance, or psychologists).
- "**Physician**" means a person who is a physician (including, but not limited to, a full-time or part-time physician, resident, attending physician, Physician with Privileges, M.D., or D.O.) working on behalf of Ordering Activity.
- "**Physician with Privileges**" means a physician not employed by Ordering Activity, but who has been granted rights to admit patients to a Healthcare Facility for providing medical services to such patient at such Healthcare Facility.
- "**Replaced Product**" means a Nuance software product that Ordering Activity previously obtained a license to use (either from Nuance directly or from a Nuance authorized reseller); which license is identified on Appendix C, and for which, Ordering Activity can show proof of entitlement to such license.

2. Grant of Rights. Subject to the terms and conditions of this Attachment A, this Exhibit 3 and the Order, Contractor hereby grants Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to allow all Physicians and Non-Physicians that are located at the Locations (each such Physician and Non-Physician, an "Authorized User") to use the Applicable Software in conjunction with a valid licensed copy of the NMS Software (such license, the "Site License"); provided such use is (i) in a manner commensurate with its intended use (as prescribed by the Documentation), and (ii) solely for Ordering Activity's internal business purposes associated with such Locations. Ordering Activity shall not allow any Authorized User to use the Applicable Software for: (a) the Authorized User's own personal use, (b) the benefit of any of Ordering Activity's hospitals, other healthcare facilities or any other facility not listed on the Order, or (iii) the benefit of any third party. Ordering Activity shall not allow anyone other than the Authorized Users to use the Applicable Software. Pursuant to the rights granted under this Section 2, Ordering Activity may reproduce and install as many copies of the Applicable Software on as many Devices as is reasonably necessary to exercise its license rights under this Section 2. All such copies must be true and complete copies (including intellectual property notices) and be made from media or files supplied by Nuance to Ordering Activity under this Attachment A or from a network source if true and complete copies of such media or files supplied by Nuance are copied to the network source.

3. Site License Fee. The license fee for the Site License (the "Site License Fee") is based on the aggregate number of Physicians at all of the Locations as of the date of the Order, except that in the event a Location is a new startup healthcare facility (a "new startup healthcare facility" being a facility that has not been operating in its current form for at least one (1) full year), the number of Physicians at such Location shall be calculated based on a mutually agreed upon good faith estimate of the number of Physicians expected to be at the Location on the first anniversary of the date of the Order, but in no event shall such number be less than the number of Physicians at such Location on the date of the Order. The number of Physicians at each Location is set forth on the Order. The Site License Fee does not provide for Maintenance Services, which are charged for separately.

4. **Add-on Facility.** Locations as listed on the Order may be amended from time to time in the event Ordering Activity wishes to add one or more additional healthcare facilities (a "New Location") to the list of Locations covered by the Site License, upon Ordering Activity paying the additional license fee for the New Location (the "Additional Site License Fee"), which Additional Site License Fee shall be at the Prevailing GSA Rate. The Additional Site License Fee for adding a New Location to be a Location under the Site License is based on the total number of Physicians at the New Location as of the effective date of the amendment to add such New Location, except that if the New Location is a new startup healthcare facility (a "new startup healthcare facility" being a facility that has not been operating in its current form for at least one (1) full year), the Additional Site License Fee for adding such New Location to be a Location under the Site License shall be based on a mutually agreed upon good faith estimate of the aggregate number of Physicians that will be added under the Site License, as a result of the addition of the New Location, within the one year period immediately following the effective date of the amendment to add such New Location, which estimated aggregate number shall include Physicians added to existing Locations covered by the Site License as a result of the addition of the New Location.

5. **License Conversion.** If the Applicable Software is identified on the Order as being a "License Conversion", then by Ordering Activity installing the Applicable Software obtained pursuant to such Order, Ordering Activity's rights to the Replaced Product terminates, except that if the Replaced Product was licensed to Ordering Activity by a Nuance authorized reseller, then Ordering Activity's rights to the Applicable Software is subject to Ordering Activity first terminating its license rights with respect to the Replaced Product. At the time of installation of the Applicable Software, Ordering Activity shall un-install, and return to Nuance (or the Nuance authorized reseller from which Ordering Activity obtained the Replaced Product) or destroy, all copies of the Replaced Product, which were the basis for Ordering Activity's eligibility for the License Conversion, and certify to Nuance, in writing, that Ordering Activity has done so.

EXHIBIT 4 – NUANCE MANAGEMENT SERVER FOR DRAGON MEDICAL ENTERPRISE NETWORK EDITION

1. **Definitions.** For purposes of this Exhibit 4, the following terms shall have the following meanings:

- "Applicable Software" means the *Nuance Management Server for Dragon Medical Enterprise Network Edition* Program specified in an Order, which Program consists of the *Nuance Management Server (NMS) Program* and the *Dragon Medical Enterprise Network Edition (DMENE) Program*.
- "Authorized User" is as defined below in Section 2(b) of this Exhibit 4.
- "Third-Party Contractor" means a third party contracted by Ordering Activity to provide services in connection with the business operations of Ordering Activity.
- "DMENE Software" means the *Dragon Medical Enterprise Network Edition Program* component of the Applicable Software.
- "Instance". An "Instance" of the NMS Software is created by installing the NMS Software, or by duplicating an existing "Instance". References to the NMS Software in this Addendum include "Instances" of the NMS Software.
- "NMS Software" means the *Nuance Management Server Program* component of the Applicable Software.
- "Operating System Environment" means a single instance of an operating system and instances of applications, if any, configured to run on that single operating system instance.
- "Physical Operating System Environment" means an Operating System Environment configured to run directly on a physical hardware system that uses physical processors, each occupying a single socket on a system's motherboard in a physical hardware system.
- "Virtual Operating System Environment" means an Operating System Environment configured to run on a virtual (or otherwise emulated) hardware system that uses virtual processors, whereby a "virtual processor" is a processor in a virtual (or otherwise emulated) hardware system. A "virtual processor" is considered to have the same number of threads and cores as a physical processor on the underlying physical hardware system.

2. **Grant of Rights.** Subject to the terms and conditions of his Attachment A, this Exhibit 4 and the Order, Contractor hereby grants Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to:

(a) install and run, at any one time, one Instance of the NMS Software on one compatible Physical Operating System Environment or one Virtual Operating System Environment, whereby, to "run an Instance" means to load the NMS Software into memory and execute one or more of its instructions (once running, an Instance is considered to be running, whether or not its instructions continue to execute, until it is removed from memory). One Instance of the NMS Software is only licensed for use with one database; and

(b) allow up to two Ordering Activity employees or third-party contractors (each such employee or third-party contractor, an "Authorized User") to: (i) use the Nuance Management Console for NMS to set up Ordering Activity's licensed users of *Dragon Medical Enterprise Network Edition Software*, manage the user options, and perform maintenance tasks on the NMS Software; and (ii) use the DMENE Software for the sole purpose of testing *Dragon Medical Enterprise Network Edition Software* - to support Ordering Activity's licensed users. For the avoidance of doubt, the *Dragon Medical Enterprise Network Edition Software* component of the Applicable Software cannot be used for clinical dictation.

EXHIBIT 5 –DRAGON MEDICAL ENTERPRISE NETWORK EDITION: CLIENT LICENSE

1. **Definitions.** For purposes of this Exhibit 5, the following terms shall have the following meanings:
 - “Applicable Software” means the *Dragon Medical Enterprise Network Edition (DMENE)* Program specified in an Order as being licensed pursuant to the “Physician Client License” or the “Non-Physician Client License” License Model; and which Program requires Ordering Activity to have a valid licensed copy of NMS Software.
 - “Authorized User” is as defined below in Section 2 of this Exhibit 5.
 - “Device” means a personal computing device as specified in the accompanying Documentation.
 - “License Conversion” means a voluntary exchange for a license to use the Applicable Software subject to the terms of Attachment A and this Exhibit 5, in lieu of a license previously obtained by Ordering Activity to use the Replaced Product, provided such an option to exchange is made available by Nuance, at Nuance’s sole discretion.
 - “NMS Software” means Nuance’s proprietary *Nuance Management Server* software product.
 - “Non-Physician” means a person who is not a Physician (including, but not limited to, a nurse, physician assistance, or psychologists).
 - “Physician” means a person who is a physician (including, but not limited to, a full-time or part-time physician, resident, attending physician, physician with privileges, M.D., or D.O.).
 - “Replaced Product” means a Nuance software product that Ordering Activity previously obtained a license to use; which product license is identified on Appendix A, and for which, Ordering Activity can show proof of entitlement to such product license.
 - “User Profile” means the record of an individual’s speaker-specific data that provides a consistent dictation experience across successive dictation sessions by such individual.

2. **Grant of Rights.** Subject to the terms and conditions of Attachment A, this Exhibit 5 and the Order, for each license to the Applicable Software purchased (as indicated in the Order), Contractor hereby grants Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to allow a single Physician or Non-Physician (such Physician or Non-Physician, an “Authorized User”) to use the Applicable Software in conjunction with a valid licensed copy of NMS Software; provided such use is: (i) in a manner commensurate with its intended use (as prescribed by the Documentation), and (ii) solely for Ordering Activity’s internal business purposes. Ordering Activity shall not allow any Authorized User to use the Applicable Software for: (a) the Authorized User’s own personal use, or (b) the benefit of any third party. Ordering Activity shall not allow anyone other than the Authorized Users to use the Applicable Software. A separate license to the Applicable Software must be purchased for each Physician or Non-Physician whose User Profile is used by the Applicable Software.

3. **Restrictions.** If the Applicable Software is identified in the Order as being a “Non-Physician Client License,” then the Authorized User under such license must be a Non-Physician, and Ordering Activity shall not allow a Physician to utilize the Applicable Software under such license.

4. **Right to Copy.** Pursuant to the rights granted under Section 2 of this Exhibit 5, Ordering Activity may reproduce and install copies of the Applicable Software on any number of Devices as is reasonably necessary to exercise its license rights under Section 2 of this Exhibit 5. All such copies must be true and complete copies (including intellectual property notices) and be made from media or files supplied by Nuance to Ordering Activity under this Attachment A or from a network source if true and complete copies of such media or files supplied by Nuance are copied to the network source.

5. **License Conversion.** If the Applicable Software is identified on the Order as being a “License Conversion,” then by Ordering Activity installing the Applicable Software obtained pursuant to such Order, Ordering Activity’s rights to the Replaced Product terminates; except that if the Replaced Product was licensed to Ordering Activity by a Nuance authorized reseller, then Ordering Activity’s rights to the Applicable Software is subject to Ordering Activity first terminating its license rights with respect to the Replaced Product. At the time of installation of the Applicable Software, Ordering Activity shall un-install, and return to Nuance (or the Nuance authorized reseller from which Ordering Activity obtained the Replaced Product) or destroy, all copies of the Replaced Product, which were the basis for Ordering Activity’s eligibility for the License Conversion, and certify to Nuance, in writing, that Ordering Activity has done so.

EXHIBIT 6 –DRAGON MEDICAL PRACTICE EDITION

1. **Definitions.** For purposes of this Exhibit 6, the following terms shall have the following meanings:
 - “Applicable Software” means the *Dragon Medical Practice Edition* Program specified in an Order.
 - “Authorized User” is as defined below in Section 2 of this Exhibit 6

- “User Profile” means the record of an individual’s speaker-specific data that provides a consistent dictation experience across successive dictation sessions by such individual.

2. Grant of Rights. Subject to the terms and conditions of Attachment A, this Exhibit 6 and Order, for each license to the Applicable Software purchased (as indicated in the Order), Contractor hereby grants Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to allow a single user (such user, an “Authorized User”) to use the Applicable Software; provided such use is: (i) in a manner commensurate with its intended use (as prescribed by the Documentation), and (ii) solely for Ordering Activity’s internal business purposes. Ordering Activity shall not allow any Authorized User to use the Applicable Software for: (a) the Authorized User’s own personal use, or (b) the benefit of any third party. Ordering Activity shall not allow anyone other than the Authorized Users to use the Applicable Software. A separate license to the Applicable Software must be purchased for each user whose User Profile is used by the Applicable Software.

EXHIBIT 7 –POWERSCRIBE 360 EXAM VOLUME

1. Definitions. For purposes of this Exhibit 7, the following terms shall have the following meanings:

- “Affiliate” means a business entity that is controlled by Ordering Activity. “Control” as used within this definition means control through ownership of more than a majority of shares of stock eligible to vote for members of the Board of Directors, or control by contract.
- “Annual Exam Period” means each successive one (1) year period following First Productive Use.
- “Annual Exam Volume” means the aggregate total number of Exams that Ordering Activity (and its Licensed Affiliate(s), if any) performed during the applicable Annual Exam Period.
- “Annual Exam Volume Report” means a report indicating: (i) the total number of Exams that Ordering Activity (and its Licensed Affiliate(s), if any) performed during the applicable Annual Exam Period, and (ii) the total number of Authorized Users that used the Exam Volume Program during the applicable Annual Exam Period, which report shall be in the form set forth in Appendix A of this Addendum.
- “Authorized User” is as defined below in Section 2 of this Exhibit 7.
- “Authorized User Count” means the total number of Authorized Users that accessed and used the Exam Volume Program during the applicable Annual Exam Period.
- “Baseline Exam Volume” means the number of Exams, performed by Ordering Activity (and its Licensed Affiliate(s), if any) during an Annual Exam Period that is used to calculate the Exam Volume License Fee. The Baseline Exam Volume is as initially specified in the Order and as subsequently augmented pursuant to Section 4.2 of this Addendum (if applicable).
- “Client Component” means the component of the Exam Volume Program that provides functionality on a Device to utilize the functionality in conjunction with accessing or utilizing the Server Component.
- “Contractor” means a third party contracted by Ordering Activity (or a Licensed Affiliate’s, if any) to provide services in connection with the business operations of Ordering Activity (or the Licensed Affiliate, if applicable).
- “CPT” means the American Medical Association’s *Current Procedural Terminology* (CPT) codes; a coding work of nomenclature and codes for reporting of healthcare services.
- “Device” means a personal computing device as specified in the accompanying Documentation.
- “Exam” means each individual radiological imaging study (e.g. CT of Abdomen, CT of Chest, MRI of the Brain, Fetal ultrasound).
- “Exam Volume License Fee” means the license fee for the right to use the Exam Volume Program, which fee is based upon the Baseline Exam Volume, as initially specified in the Order and as subsequently augmented pursuant to Section 4.2 of this Addendum (if applicable).
- “Exam Volume Program” means the PowerScribe 360 Program specified in the Order as being licensed to Ordering Activity pursuant to the “Exam Volume License” License Model, which Program consists of the “Server Component” and the “Client Component”.
- “First Productive Use” means the date Nuance has completed the Professional Services set forth in the Order related to the installation of the Exam Volume Program and, therefore, the Exam Volume Program is capable of processing data in Ordering Activity’s commercial environment.
- “Instance”. An “Instance” of the Sever Component of the Exam Volume Program is created by installing the Server Component, or by duplicating an existing “Instance”. References to the Server Component in this Addendum include “Instances” of the Server Component.

- “Licensed Affiliate” means each Affiliate that is authorized, subject to the terms and conditions of the Agreement and this Addendum, to use the Exam Volume Program hereunder, which Affiliates are set forth below.
- “License Conversion” means a voluntary exchange for a license to use the Exam Volume Program subject to the terms of the Agreement and this Addendum, in lieu of a license previously obtained by Ordering Activity to use the Replaced Product, provided such an option to exchange is made available by Nuance, at Nuance’s sole discretion.
- “Operating System Environment” means a single instance of an operating system and instances of applications, if any, configured to run on that single operating system instance.
- “Physical Operating System Environment” means an Operating System Environment configured to run directly on a physical hardware system that uses physical processors, each occupying a single socket on a system’s motherboard in a physical hardware system.
- “Replaced Product” means a Nuance software product that Ordering Activity previously obtained a license to use (either from Nuance directly or from a Nuance authorized reseller); which license is identified in the applicable Implementation Services Order (ISO), and for which, Ordering Activity can show proof of entitlement to such license.
- “Server Component” means the component of the Exam Volume Program that provides services or functionality on Ordering Activity’s server (physical hardware systems capable of running the Server Component are “servers”. A hardware partition or blade is considered to be a separate physical hardware system).
- “Virtual Operating System Environment” means an Operating System Environment configured to run on a virtual (or otherwise emulated) hardware system that uses virtual processors, whereby a “virtual processor” is a processor in a virtual (or otherwise emulated) hardware system. A “virtual processor” is considered to have the same number of threads and cores as a physical processor on the underlying physical hardware system.

2. Grant of Rights. Subject to the terms and conditions of Attachment A, this Exhibit 7 and the Order, Contractor hereby grants Ordering Activity (for itself and its Licensed Affiliate(s), if any) a limited, non-exclusive, non-transferable, non-sublicensable, perpetual license to:

(a) install and run, at any one time, one Instance of the Server Component on one compatible Physical Operating System Environment or one Virtual Operating System Environment, whereby, to “run an Instance” means to load the Server Component into memory and execute one or more of its instructions (once running, an Instance is considered to be running, whether or not its instructions continue to execute, until it is removed from memory). One Instance of the Server Component is only licensed for use with one database; and

(b) allow Ordering Activity employees and contractors (each such employee or contractor, an “Authorized User”) to use the Exam Volume Program; provided such use is: (i) in a manner commensurate with the Exam Volume Program’s intended use (as described in the Documentation), and (ii) solely for Ordering Activity’s (and its Licensed Affiliates’ (if any)) internal business purposes. Ordering Activity shall not allow any Authorized User to use the Exam Volume Program for: (a) the Authorized User’s own personal use, or (b) the benefit of any third party. Ordering Activity shall not allow anyone other than the Authorized Users to use the Exam Volume Program.

3. Licensed Affiliates. Ordering Activity is responsible for the performance of each Licensed Affiliate (if any) in connection with its use of the Exam Volume Program, and guarantees each Licensed Affiliate’s and Authorized User’s full and faithful compliance with the terms of this Attachment A. Ordering Activity will be liable under the terms of this Attachment A for any act or omission by any Licensed Affiliate or any Authorized User to the same extent as if Ordering Activity itself had taken such action or made such omission.

4. Reporting. Ordering Activity shall provide Contractor through Nuance, within thirty (30) days following each Annual Exam Period, with an Annual Exam Volume Report for such Annual Exam Period, in which, Ordering Activity shall indicate: (i) the applicable Annual Exam Volume and the then-current Baseline Exam Volume for the applicable Annual Exam Period, and the disparity between them, as well as a break out of the number of Exams performed by Ordering Activity and each Licensed Affiliate (if any) during such Annual Exam Period; and (ii) the Authorized User Count for the applicable Annual Exam Period. Each Annual Exam Volume Report must be sent by mail, and via email, to the respective mailing and email addresses, or such other address as Nuance may designate by written notice. This reporting requirement is a material element of this Attachment A.

5. Review Period. Provided that Contractor through Nuance is performing Professional Services related to the installation of the Exam Volume Program at Ordering Activity’s location, as indicated in the Order, then unless Ordering Activity waives in writing the right to review as specified herein, Ordering Activity shall have a period of fourteen (14) days (a “Review Period”), commencing on the date of First Productive Use, to provide Nuance a written request (“Corrections Request”) reasonably detailing how the Exam Volume Program failed to materially comply with the specifications, tests and other criteria set forth in the Documentation (“Completion Criteria”). Any Corrections Request should be sent to the applicable project manager, with a copy e-mailed to corrections.request@nuance.com. Nuance shall use commercially reasonable efforts to correct any material failure(s) of the Exam Volume Program documented in the Corrections Request to conform to the Completion Criteria. Nuance shall deliver the revised Exam Volume Program to Ordering Activity within fifteen (15) business days of receiving such Corrections Request and Ordering Activity shall have an additional period of fourteen (14) days from the date of receipt of such revised Exam Volume Program (such 14 day period, also a “Review Period”) in which it may provide Nuance another Corrections Request pursuant to the above. The

foregoing review/correction process shall be repeated until such time a Review Period concludes without Nuance receiving a Corrections Request; provided that, if Nuance is unable to correct material failure(s) in the Exam Volume Program to satisfy the Completion Criteria after three (3) attempts, Nuance may terminate the Order and refund (i) fees received for the Exam Volume Program, and (ii) fees received for Training Services and Maintenance Services unperformed by Nuance due to the termination. Upon such termination, Ordering Activity shall return the Exam Volume Program, including any copies thereof and related Documentation, to Nuance. Upon conclusion of any Review Period in which Nuance does not receive a Corrections Request, or upon Nuance's receipt of Ordering Activity's waiver of review (whichever shall first occur), the Exam Volume Program will be deemed accepted by Ordering Activity.

6. Services.

6.1 Maintenance Services. The Exam Volume License Fee does not provide for Maintenance Services, which services are charged for separately.

6.2 Professional Services. Provided that Contractor through Nuance is performing Professional Services related to the installation of the Exam Volume Program at Ordering Activity's location, as indicated in the Order, then:

(a) Nuance shall perform Professional Services related to installation of Exam Volume Program pursuant to its project delivery methodology set forth at:

ftp://ftp.scansoft.com/nuance/dictaphone/whitepapers/wp_profServicesMethodology.pdf.

(b) Within forty five (45) days of the Effective Date of the Order, Nuance shall develop a final detailed implementation plan based on the Implementation Services Order contained within the Order ("Implementation Plan"). The Implementation Plan shall include an allocation of responsibility for each task to Nuance or Ordering Activity, any technical or physical requirements necessary for Nuance to complete the installation of the Exam Volume Program, and any assumptions and/or critical events, the occurrence or non-occurrence of which serves as condition upon which the installation services occur. The fees for the Professional Services are subject to Ordering Activity's fulfillment of its responsibilities, and/or the occurrence or non-occurrence of any assumptions and/or critical events, each as set forth in this Attachment A, this Exhibit 7 and the Order (including the ISO), or Implementation Plan. Failure of Ordering Activity to fulfill a responsibility, the nonoccurrence of an assumption and/or critical event, or any other modification to the Implementation Plan may result in an extended timeline for Nuance to complete the applicable Professional Services and/or Ordering Activity incurring additional fees. Scope changes to the Implementation Plan shall be identified in writing by Nuance and presented to Ordering Activity for approval before such additional Professional Services are delivered, provided Nuance shall not be liable for any uncompleted or undelivered Professional Services should Ordering Activity not approve such changes.

(c) Nuance will send an email notification to Ordering Activity indicating when the Professional Services related to installation have been completed. Said email will be sent to the email address provided by Ordering Activity in the applicable ISO, and the date of completion of such Professional Services will be deemed the date of First Productive Use. The parties acknowledge that First Productive Use may occur prior to Nuance completing those Services set forth in an Order that are intended by the parties to be performed post-installation (e.g., Training Services).

8. License Conversion. If the Exam Volume Program is identified on the Order as being a "License Conversion", then by Ordering Activity installing the Exam Volume Program obtained pursuant to such Order, Ordering Activity's rights to the Replaced Product terminates. At the time of installation of the Exam Volume Program, Ordering Activity shall un-install, and return to Nuance or destroy, the copies of the Replaced Product, which were the basis for Ordering Activity's eligibility for the License Conversion, and certify to Nuance, in writing, that Ordering Activity has done so.

9. CPT. The Exam Volume Program includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60654. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements. CPT is copyrighted by the American Medical Association. CPT is a registered trademark of the American Medical Association.

EXHIBIT 8 – HEALTHCARE HARDWARE AND SOFTWARE MAINTENANCE OPTIONS

Ordering Activity is responsible for having trained staff available to support remote access connections. Contractor through Nuance requires the identification of trained and authorized callers to its Technical Help Desk. (PowerScribe Ordering Activities Only: Each PowerScribe Ordering Activity site is required to provide a dedicated, fully trained PowerScribe administrator.) Additionally, the Ordering Activity is responsible to define and manage its data back-up and recovery strategy in accordance with its operational needs.

Further, if Ordering Activity licenses DNS Programs, only Option I support is available. Contractor through Nuance will provide support for the latest release and the immediate prior release in accordance with the provisions described herein.

POLICIES

Matching Support Service Options

All Programs and Equipment must be covered by a Service Option that provides the same level of support.

Ordering Activity Obligations

Our support technicians have been trained to undertake a process to ensure the fastest possible resolution. To do this, the technician will request Ordering Activity's assistance to help "troubleshoot" the problem in order for the technician to diagnosis the fault.

- Running diagnostic test appropriate for the problem reported
- Installation of service packs, components, updates, upgrades and patches to address the problem
- Contacting select third party vendors and facilitating immediate resolution or managing resolution plans
- Engineer to engineer collaboration between Nuance experts and Ordering Activity for more complex issue resolution

DEFINITIONS

"*Update*" means a release of a Program that may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections and typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). "Update" shall not be construed to include Upgrades.

"*Upgrade*" means a release of the Program that may include some feature enhancements and/or additional capabilities (functionality) over versions of the Programs previously supplied to Ordering Activity, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0) For clarification purposes, "Upgrade" shall not be construed to include either a release that contains major new feature enhancements or a release that contains major new capabilities such that, in either case, Nuance, in its sole discretion, deems such release to constitute a new product or substantial extension of the product line.

SERVICE OPTIONS

A. OPTION I - 24x7 Remote Only Coverage. Under this Option, Contractor through Nuance will use commercially reasonable efforts to diagnose and resolve any issues concerning the Programs via telephone, email, web page and/or fax support. Regular telephone support and assistance is provided for Updates and Upgrades. Ordering Activity shall receive any Updates and Upgrades released by Nuance in the ordinary course of its business during the term of this Maintenance Services. Ordering Activity is also entitled to receive documentation and minor enhancements as Nuance makes them available during the Term of this Maintenance Plan. The following additional terms apply:

1. Remote Support Requirements

For remote support, Contractor through Nuance requires either dial-in or Internet access to all Ordering Activity systems. In order to provide this support, Nuance requires the utilization of (i) pcANYWHERE (ii) Citrix GoToAssist Web based support technology or (iii) Microsoft Terminal Services (each a "Supported Solution") for console and workstation level access. If the Ordering Activity is unwilling to allow the use of a Supported Solution, then Nuance will be severely limited in its ability to provide support and resulting in additional support fees through a maintenance upcharge.

2. Emergency Remote Support

Emergency remote support is provided on a 24-hour/7 days per week basis. An Emergency Support call is authorized when the Programs (excluding DNS for which support is delivered remotely) or Equipment fails to operate in accordance with the Specifications, and the failure is of such a nature as to prevent the continuation of the day-to-day business operations of Ordering Activity, and for which no immediate workaround is available. Contractor through Nuance will make commercially reasonable efforts to assist the Ordering Activity in becoming operational and will return all Emergency Support calls within one (1) hour following receipt of the call by Nuance. (PowerScribe Ordering Activities Only: The PowerScribe administrator will make all emergency support calls.)

3. Non-Emergency Remote Support - Response Time

For Non-Emergency Remote Support calls, Contractor through Nuance will contact Ordering Activity within four (4) hours following receipt of the call.

4. Update and Upgrade Coverage

Contractor through Nuance will provide to Ordering Activity Updates and Upgrades of the applicable Programs released during the Term of this Maintenance Plan. On-site installation of Updates by Nuance is provided only under Options II and III (described below).

5. Virus Protection

Contractor through Nuance ships all bundled server-based products with the latest Nuance-approved version of anti-virus software product and ensures proper operation of the Nuance core application and essential utility software when used in conjunction with such Nuance approved anti-virus software Nuance, as part of the installation process, will configure server-based products to perform automated virus definition updates over the Internet if requested by the Ordering Activity and if Internet access is provided by the Ordering Activity.

Ordering Activity is responsible for protecting its network environment from viruses and damages resulting from virus infection. Ordering Activity is also responsible for ensuring virus definition updates are performed consistent with Ordering Activity internal virus protection policies. Ordering Activity is responsible for maintaining any subscriptions necessary to obtain virus updates. Ordering Activities who chose to implement anti-virus software other than a Nuance-approved solution, do so at their own risk.

6. Third Party Software Support

Coverage for Third Party Software sold by Contractor to Ordering Activity includes telephone support as required to the extent that the applicable Third Party Software relates to the Programs.

Contractor through Nuance ships all bundled products with the latest Nuance-approved Third Party Software service packs, patches and hot fixes. Nuance will identify any applicable Third Party Software service packs, patches, or hot fixes necessary to ensure proper operation of Nuance core application or essential utility software contained in the Programs. Ordering Activity is responsible for providing installation of Third Party updates.

If Ordering Activity determines that additional or different versions of the Nuance-supplied Third Party Software service pack, patches, or hot fixes are necessary to meet their operational needs, Ordering Activity may contact and advise Nuance of such requirement. Contractor through Nuance will make a good faith effort to confirm and advise Ordering Activity whether such additional or different version of such Third Party Software are compatible with Nuance's core application and essential utility software.

Any Third Party Software upgrades implemented by Ordering Activity without the approval of Contractor through Nuance will not be supported by Nuance and Ordering Activities who elect to install Third Party Software updates without contacting Nuance, do so at their own risk.

7. Additional Data FieldMappings on HL7 Integrations.

Ordering Activities who have standard HL7 integrations to an HIS system will be entitled to up to five (5) free additional HL7 data field mappings within their integration. Maintenance Services does not provide for an entire new integration when HL7 standards migrate to new levels (e.g. HL7 version 3), Ordering Activity replaces their host environment nor does Maintenance Services cover any custom requests.

8. Equipment Upgrades. From time to time Updates and/or Upgrades on applicable Programs may result in the requirement or recommendation by Contractor through Nuance that Ordering Activity upgrade the Equipment and/or upgrade Ordering Activity-provided hardware components. Any such necessary Equipment and/or Ordering Activity-provided hardware upgrades shall be at the sole responsibility and cost of Ordering Activity, whether the original Equipment was purchased from Nuance or purchased separately by Ordering Activity.

9. Implementation Services and Upgrades.

From time to time Updates and/or Upgrades on applicable Programs may result in the requirement or recommendation by Contractor through Nuance that Ordering Activity receives various services to implement the software effectively. Such services include but are not limited to user training, administrator training, software programming and project management.

10. Equipment Support

During the equipment warranty period, Contractor through Nuance will provide Ordering Activity with remote support help desk guidance on Equipment replacement. Under Option I, Ordering Activity will be responsible for (i) Equipment fault troubleshooting, (ii) any labor related to Equipment replacement, and (iii) returning any defective Equipment directly to the applicable manufacturer. Nuance will provide hardware replacement parts for only Nuance- proprietary hardware products covered hereunder.

11. Depot Repair Support

Contractor through Nuance maintains a depot repair center located in Melbourne, Florida for its desktop and portable Nuance products (i.e., connections telephones (i.e., C-Phones), telephones, microphones and similar peripherals, foot pedals and accessories (collectively, "Desktop, Portable and Peripheral Products"). In the event Ordering Activity requires repair support for any Desktop, Portable and Peripheral Product, Ordering Activity may chose to collect, ship, receive and deploy the applicable Desktop, Portable and Peripheral Product to the Nuance depot repair center.

NOTE: On-site visits are not covered under Option I.

B. OPTION II - Remote & 8x5 On-site Coverage. In addition to the support coverage provided in Option I above, Contractor through Nuance will provide on-site installation of Updates (excluding DNS for which support is delivered remotely), and on-site support for Equipment repair not otherwise provided for by Depot Repair Support during Nuance's Normal Working Hours. Normal Working Hours are defined as 8:00 a.m. (0800 hours) to 5:00 p.m. (1700 hours) local time (including travel time), Monday through Friday, excluding U.S. federal holidays. Nuance shall not be obligated to provide on-site support coverage outside of the Normal Working Hours unless Ordering Activity has purchased Option III coverage. Services under Option II also include:

1. Equipment Support

Contractor through Nuance will provide all necessary on-site labor for all Equipment not otherwise provided for by Depot Repair Support and Equipment replacement parts to Ordering Activity in accordance with the applicable Option II or III coverage purchased by Ordering Activity. In addition, Nuance will provide Equipment fault troubleshooting and will be responsible for the return of any defective Equipment to the applicable manufacturer.

C. OPTION III - Remote & 24x7 On-site Coverage: In addition to support coverage provided in Options I and II, Contractor through Nuance will provide on-site installation of Updates (excluding DNS for which support is delivered remotely), and on-site support for

Equipment repair not otherwise provided for by Depot Repair Support on a twenty-four (24) hours per day, seven (7) days per week (24x7) basis.

Palo Alto Networks, Inc.
3300 Olcott Street
Santa Clara, CA 95054

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

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

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

PALO ALTO NETWORKS

PALO ALTO NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

1. License

Subject to the terms and conditions of this Attachment A, Contractor grants to you ("**Ordering Activity**") a non-exclusive license to use the Software solely as part of the Product with which the Software is delivered and solely for Ordering Activity's internal business purposes. If Ordering Activity purchases the Product for use by any Customer Affiliate (defined herein), Ordering Activity will provide each such Customer Affiliate with a copy of this Attachment A and will ensure that each such Customer Affiliate complies with the terms and conditions of this Attachment A. Ordering Activity will be responsible for any breach by any such Customer Affiliate of this Attachment A. For purposes of this Attachment A, "**Customer Affiliate**" means any entity that controls, or is controlled by, or is under common control with Ordering Activity, and "**Control**" means ownership, directly or indirectly of 50% or more of the voting interest of Ordering Activity. All other rights in the Software are expressly reserved by Contractor.

2. Restrictions

Ordering Activity shall maintain the Software in strict confidence and shall not sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Software or make the functionality of the Software available to any other party through any means, including, without limitation, by uploading the Software to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services. Ordering Activity shall not modify, translate or create derivative works based on the Software, in whole or in part, or permit or authorize a third party to do so. Ordering Activity acknowledges and agrees that portions of the Software, including, without limitation, the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Palo Alto Networks and/or its suppliers. Accordingly, Ordering Activity shall not disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. Ordering Activity shall not disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that Ordering Activity runs (or has run) on the Software. Ordering Activity shall not copy the Software except for making a reasonable number of archival or backup copies; provided that Ordering Activity reproduces on such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software as delivered to Ordering Activity. If Ordering Activity sells, leases, lends, rents or otherwise transfers a Product to a third party, Ordering Activity will permanently erase all copies of the Software from the Product and destroy any and all copies of the Software in Ordering Activity's possession or control.

3. Ownership

The Software is licensed, not sold. Palo Alto Networks and/or its suppliers retain ownership of the Software, including all intellectual property rights therein. Ordering Activity will not delete or in any manner alter the copyright, trademark or other proprietary rights notices or markings appearing on the Software as delivered to Ordering Activity.

4. U.S. Government Rights

The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212, and DFARS 252.227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation will be only those specified as set forth in this Attachment A.

5. Limited Warranty

Contractor warrants that the (a) Product hardware will be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will perform substantially in accordance with Palo Alto Networks' standard specifications for three (3) months from the date of shipment. As Ordering Activity's remedy and Contractor's and its suppliers' liability for any breach of this warranty, Contractor shall, at its option and expense, repair or replace the Product or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are replaced become the property of Contractor. Contractor shall not be responsible for Ordering Activity's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Contractor for repair, whether under warranty or not.

6. Exclusions

The limited warranty set forth under “Limited Warranty” above applies only to the software that Contractor includes in the Product as shipped by Contractor. Contractor will not have any obligation to the extent any failure of a Product to comply with the limited warranty set forth under “Limited Warranty” above results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Contractor-authorized personnel; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks’ specifications; (iv) improper installation or site preparation or any failure by Ordering Activity to comply with environmental and storage requirements for the Product specified by Contractor, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage. Contractor and its suppliers do not warrant that the operation of the Product will be uninterrupted or error free.

7. Disclaimers

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED UNDER “LIMITED WARRANTY” ABOVE, CONTRACTOR AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE..

EXHIBIT A - END USER SUPPORT TERMS AND CONDITIONS

SUPPORT PLANS AND SERVICES OFFERED

Support Offerings	4 Hour Premium Support	Premium Support	Standard Support
Office Hours Availability	See https://Support.paloaltonetworks.com		
After Hours Availability	Yes - 24x7x365	Yes - 24x7x365	No
Hardware Support			
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)	Yes	No	No
Advance Replacement Service: Next Business Day Ship	No	Yes	No
Return and Repair	No	No	Yes
Call Response Times			
Severity 1 – Critical Product is down, critically effects customer production environment. No workaround yet available.	< 1 hour	< 1 hour	< 1 hour 7am – 6pm PST
Severity 2 – High Product is impaired, customer production up, but impacted. No workaround yet.	2 Business Hours	2 Business Hours	2 Business Hours
Severity 3 – Medium A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.	4 Business Hours	4 Business Hours	4 Business Hours
Severity 4 -- Low Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer.	8 Business Hours	8 Business Hours	8 Business Hours
Contacting Support			
Palo Alto Networks, Inc 3300 Olcott Street Santa Clara, CA 95054	Toll Free US: 1.866.898.9087 Website: support.paloaltonetworks.com	Toll Free US – 1.866.898.9087 Outside the US +1.408.738.7799 Website: support.paloaltonetworks.com	

1. DEFINITIONS.

- a) "Business Hours" means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.
- b) "Hardware" means the appliance and server agent products listed on Contractor’s published GSA price list.
- c) "Major Releases" means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- d) "Minor Releases" means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set

- of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- e) "Maintenance Releases" means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
 - f) "Palo Alto Networks Standard Support," "Palo Alto Networks Premium Support," and "Palo Alto Networks 4 Hour Premium Support" refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.
 - g) "Palo Alto Networks Support Plans" means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.
 - h) "Palo Alto Networks Support Web Site" means the web site currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.
 - i) "Products" means, collectively, Hardware and Software.
 - j) "Software" means the software products listed on Contractor's published GSA price list, including any software embedded in Hardware.

2. DESCRIPTION OF SUPPORT PLANS.

Each Product under a Palo Alto Networks Support Plan must be registered by Ordering Activity in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Ordering Activity's purchase of a Palo Alto Networks Support Plan, Contractor through Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled "Support Plans and Services Offered" above, which are more fully described as follows:

- a) **Technical Support**
 - i. Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Ordering Activity.
 - ii. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled "Support Plans and Services Offered" above.
- b) **Secure Web Access**
 - i. Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.
 - ii. Contractor through Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

3. SUPPORT OPTIONS.

Ordering Activity shall choose from three support plans: Palo Alto Networks Standard Support, Palo Alto Networks Premium Support and Palo Alto Networks 4 Hour Premium Support. Based upon the Ordering Activity's selection and payment of the applicable fees per the purchase, Contractor through Palo Alto Networks shall have the following obligations:

- a) **Palo Alto Networks Standard Support**
 - i. Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.
 - ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases.
 - iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases.
 - iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.
 - v. Provide technical telephone support Monday through Friday, excluding Palo Alto Networks' designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.
 - vi. Provide a return and repair service for Hardware defects.

Ordering Activity may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled "Support Plans and Services Offered" above.

- b) **Palo Alto Networks Premium Support**
Includes all of the support services described under Palo Alto Networks Standard Support plus the following:
 - i. After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.
 - ii. Provide a next business day ship advance replacement for Hardware defects.
- c) **Palo Alto Networks 4 Hour Premium Support**
This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Support plus commercially reasonable efforts by Contractor through Palo Alto Networks to deliver the replacement hardware to the Ordering Activity within four hours.

4. RMA POLICY AND PROCESS.

In those situations when it is necessary for Ordering Activity to return a Product to Contractor through Palo Alto Networks, Ordering Activity must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

- a) **Return and Repair:** Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks

Support Web Site. Palo Alto Networks Support will work with Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Ordering Activity shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Attachment A), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Ordering Activity, except that if Ordering Activity is located outside the United States, Ordering Activity will be responsible for any taxes, duties, fees or other charges assessed in connection with importing the repaired or replaced Product into Ordering Activity's country of destination.

- b) Advance Replacement: Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Ordering Activity by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Ordering Activity, except that if Ordering Activity is located outside the United States, Upon receipt of a replacement Product, Ordering Activity shall return the defective Product to Palo Alto Networks in the replacement Product's packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Attachment A), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup.
- c) 4 Hour RMA Replacement: Ordering Activity shall obtain an RMA Number for the Product that Ordering Activity desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Ordering Activity to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Contractor through Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Ordering Activity within four hours of the time the Ordering Activity receives an RMA number. Ordering Activity must have an authorized representative available to accept delivery of the replacement Product.

5. ORDERING ACTIVITY OBLIGATIONS

During the term of this Attachment A, Ordering Activity shall:

- a) Operate at the then-current Maintenance Release; and
- b) Use reasonable efforts to isolate, collect all error and log files to enable Contractor through Palo Alto Networks to fulfill its obligations herein.

6. LIMITATIONS.

The following services are expressly excluded from the Palo Alto Network Support Plans:

- a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized personnel; (ii) accident, fault or negligence of Ordering Activity; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Contractor through Palo Alto Networks.
- b) Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Palo Alto Networks.

7. NO WARRANTY.

Nothing in this Attachment A shall be construed as expanding or adding to the warranty set forth in this Attachment A. CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO 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 THEREUNDER, AND CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

PHD Virtual Technologies, Inc.
1880 JFK Blvd., Suite 1301
Philadelphia, PA 19103

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

1. **Scope.** This Rider and the attached **PHD Virtual 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**

PHD VIRTUAL TECHNOLOGIES, INC.

PHD VIRTUAL TECHNOLOGIES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

1.1 "Computer" shall mean a single microcomputer, personal computer, workstation, computer terminal, network workstation or network file server.

1.2 A "Derivative Work" means a work that is based on one or more preexisting works, such as a revision, enhancement, modification, translation, abridgment, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and that, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a preexisting work. Unless otherwise provided in this Attachment A, all references to the Software include any Derivative Works provided by Contractor or authorized to be made by Ordering Activity hereunder.

1.3 "Documentation" means documentation that describes the function and use of each program in sufficient detail to permit use of the Software.

1.4 "Intellectual Property Rights" means all intellectual property rights protected by law throughout the world, including all copyrights, copyright registrations and applications, trademark rights (including trade dress), trademark registrations and applications, patent rights (including the right to apply therefor), patent applications (including the right to claim priority under applicable international conventions) and all patents issuing thereon, industrial property rights, inventions (whether or not patentable), together with all utility and design, know-how, specifications, trade names, mask-work rights, trade secrets, moral rights, author's rights, algorithms, rights in packaging, goodwill, and other intellectual and industrial property rights, as may exist now and hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

1.5 "Ordering Activity" means the single end-user customer organization entering into this Attachment A.

1.6 "Managed Service Provider" means Ordering Activity use of Software to provide remote and/or network-based backup and recovery services to third parties.

1.7 The "Object Code" of the Software means the programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse assembly, reverse compiling, or reverse engineering.

1.8 "Software" means any computer software program provided by Contractor, as applicable to Ordering Activity, comprising the various applications included under this Attachment A and any updates, upgrades, enhancements, license keys or other automated copy protection method, error corrections or bug fixes thereto provided by Contractor to Ordering Activity.

1.9 The "Source Code" of the Software means the program(s) written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into Object Code for operation on computer equipment through assembly or compiling, and may include documentation, such as, flow charts, schematics, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the program(s) in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the program(s) without undue experimentation.

2. LICENSE GRANTS AND RESTRICTIONS.

2.1 Subject to the terms of this Attachment A, Contractor grants to Ordering Activity a non-transferable, non-exclusive, non-sublicenseable limited license, under all applicable Intellectual Property Rights, to install, copy, use and display the Software applicable to Ordering Activity on a computer or computer network, owned or controlled solely by Ordering Activity, and to access and permit its employees and consultants to access such Software in accordance with the Documentation, for internal business purposes only. All rights not expressly granted to Ordering Activity hereunder are reserved by Contractor. The Software is "installed" on a Computer when it is copied to the hard disk of a Computer. The Software is in "use" when it is loaded into the Computer's temporary memory (i.e., RAM). If the Software is installed on a network fileserver, Ordering Activity agrees to be bound by the terms of this Attachment A. Except as related to the internal business of Ordering Activity, Ordering Activity may not use the Software to

process accounts or records, or to generate output data, for the direct benefit of, or for purposes of rendering services to, any other business entities or organizations.

2.2 If the license granted to Ordering Activity hereunder is a “perpetual” license, such license to operate the Software will remain in full force and effect until the occurrence of any termination.

2.3 Except as expressly set forth in this Attachment A, Ordering Activity may not:

(a) (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover, in any way, any source code, programming, algorithms, design structure, interoperability interfaces, concepts, construction methods underlying ideas, or file formats of the Software, for any purpose, (ii) remove any identification markings, including but not limited to copyright notices and trademarks, from the Software, or (iii) make any modification, enhancement, or Derivative Work of the Software, or incorporate the Software, or any portion thereof, into or with any other software; or

(b) copy, sell, lease, assign, distribute or transfer in any manner or form, in whole or in part, the Software.

2.4 Notwithstanding the foregoing, Ordering Activity may make copies of the Documentation, containing all legends, trademarks, trade names, copyright notices and other identifications associated with the original, to the extent reasonably necessary to utilize the licensed Software as set forth in this Attachment A. Ordering Activity may install the licensed Software solely as set forth below; automated copy protection may prevent any further installation without intervention by Contractor:

(a) If Ordering Activity has purchased a perpetual “server” license, then the Ordering Activity may operate the Software only on a single server Computer unless otherwise agreed in writing by Contractor. Except as otherwise permitted in this Attachment A, Ordering Activity may not use this server licensed Software to provide third parties services.

(b) If Ordering Activity has purchased a term “Managed Service Provider” license, then the Ordering Activity may operate the Software only to the maximum number of server or “virtual machines” unless agreed in writing by Contractor. It is expressly prohibited to use the Software where the result of such an installation will cause the maximum authorized for use to be exceeded.

2.5 Except as specifically set forth in this Attachment A, Ordering Activity acknowledges that this Attachment A does not grant Ordering Activity any use of or rights to the Software, including, but not limited to, any rights to the Source Code for the Software.

2.6 Ordering Activity acknowledges that Contractor has, and will from time to time create, other computer software programs that may be based upon or related to the Software and that those other programs are not licensed to Ordering Activity under this Attachment A.

2.7 Except as specifically set forth herein, Ordering Activity acknowledges that Contractor has no responsibility for providing Ordering Activity with any services, support, product upgrades or other enhancements for or in connection with, and that Contractor is under no obligation to create any product upgrades or enhancements to, the Software.

2.8 Ordering Activity's use of the licensed Software is subject to the license and automated protection methods used by Contractor. Ordering Activity agrees not to take or cooperate in any effort to defeat or avoid these protection methods.

3. OWNERSHIP.

3.1 Ordering Activity acknowledges that PHD Virtual Technologies, Inc. is the owner of all Intellectual Property Rights associated with the Software and except as set forth in this Attachment A PHD Virtual Technologies, Inc. does not grant any rights to or ownership of the Software to Ordering Activity. Ordering Activity further acknowledges that PHD Virtual Technologies Inc retains all right, title and interest in the Software and Documentation and in all improvements, enhancements, modifications and Derivative Works of the Software including all rights to patent, copyright, trade secret and trademark, regardless of the identity of the creating party except for Derivative Works which are built solely from the API's (as defined below) which shall be owned by Ordering Activity. Notwithstanding the foregoing, in the event of the creation of a Derivative Work by Ordering Activity based upon the API supplied by PHD Virtual Technologies, Inc., Ordering Activity agrees to deliver to PHD Virtual Technologies Inc a copy of the source code relating to such Derivative Work. PHD Virtual Technologies, Inc. shall thereafter be permitted to utilize such source code in order to create or enhance its existing products for its customers.

3.2 Ordering Activity agrees that all trademark and intellectual property notices for the Software will be preserved unmodified. Ordering Activity further agrees to take all reasonable steps to ensure that unauthorized persons will not have access to any of the Software and that all authorized persons having access will refrain from any disclosure, duplication or reproduction of the Software except to the extent permitted under this Attachment A.

3.3 Ordering Activity shall instruct its employees and agents that making unauthorized copies of the Software or Documentation or any portion thereof, or permitting use of the Software and/or Documentation other than in accordance with the terms of this Attachment A, constitutes a violation of copyright law and of this Attachment A.

3.4 Except as expressly permitted in this Attachment A, Ordering Activity agrees not to directly or indirectly register, apply for registration or attempt to acquire any legal protection for, or any ownership rights in, the Software or any improvements, enhancements, modifications or Derivative Works of the Software or to take any other action which may adversely affect PHD Virtual Technologies, Inc.'s rights or interest in the Software and.

3.5 Ordering Activity agrees to notify PHD Virtual Technologies, Inc. immediately and in writing of all circumstances, of which Ordering Activity is aware, surrounding the unauthorized possession or use of the Software by any person or entity.

4. MAINTENANCE PLAN.

Contractor through PHD Virtual Technologies, Inc. may, from time to time, offer a service and support plan (a "Maintenance Plan") in connection with the Software as PHD Virtual Technologies, Inc. may determine in PHD Virtual Technologies, Inc.'s sole discretion and provide Software updates and telephone support. If the purchase documentation specifies certain services as included in the Maintenance Plan, then the Maintenance Plan will include only those services as PHD Virtual Technologies, Inc.'s, at its sole discretion, defines and modifies those specified services from time to time. If the purchase documentation does not specify the services included in the Maintenance Plan, the Maintenance Plan includes only those services that PHD Virtual Technologies, Inc. identifies as being contained within the Maintenance Plan. Contractor through PHD Virtual Technologies Inc. agrees to provide the services in Ordering Activity's Maintenance Plan in a similar manner and degree in which PHD Virtual Technologies, Inc. provides those services to Software Ordering Activity who purchase the same Maintenance Plan. Ordering Activity agrees to follow service policies or procedures. Contractor through PHD Virtual Technologies, Inc. may, at its sole discretion, discontinue any services to Ordering Activity for any version and edition of the Software at any time but with sufficient and reasonable notice.

5. WARRANTIES AND DISCLAIMERS.

Contractor does not warrant that the Software will be error-free in all circumstances. Contractor warrants to Ordering Activity that, on the date of Ordering Activity's initial use of the Software and for a period ending thirty (30) days following that date (the "warranty period"), the licensed Software will perform substantially in accordance with the Documentation. In the event of any defect or error covered by such warranty, Ordering Activity will provide Contractor with sufficient detail to allow Contractor to reproduce the defect or error. If notified in writing by Ordering Activity during the warranty period, Contractor will, at its sole option, either (a) correct such error or defect in the Software, at no cost to Ordering Activity and within a reasonable time, by issuing corrected instructions, a restriction, or a bypass, or (b) accept return of the Software and Documentation and refund any license fees previously paid by Ordering Activity in connection with such Software. Contractor is not responsible for any defect or error not reported during the warranty period or any defect or error caused by a program Ordering Activity has modified, misused or damaged. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, OR SATISFACTORY QUALITY REGARDLESS OF WHETHER IMPOSED BY CONTRACT, STATUTE, COURSE OF DEALING, CUSTOM OR USAGE OR OTHERWISE.

6. TRADEMARKS.

Ordering Activity acknowledges PHD Virtual Technologies Inc. ownership of the trademark(s) in and to the Software names, and all related trademarks and service marks. Except as set forth in this Attachment A, Ordering Activity further acknowledges that it will acquire no interest or goodwill in such trademarks and service marks by virtue of this Attachment A or the performance or exercise by Ordering Activity of its rights, duties and obligations under this Attachment A. Ordering Activity agrees not to use the name of the Software or PHD Virtual Technologies, Inc.'s trademarks or service marks (or any confusingly similar names or symbols), in whole or in part, as part of Ordering Activity's business or trade name.

7. APPLICATION PROGRAMMING INTERFACE

7.1 Contractor through PHD Virtual Technologies, Inc. will provide to Licensee Application Programming Interface ("API's") for Ordering Activity's use solely for the purpose of creating software that communicates with the Software.

7.2 Ordering Activity will not (1) use the APIs to create, design or develop anything other than Software; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the Software or the APIs, except that Ordering Activity may modify and create derivative works of, and distribute any code provided in the APIs that is designated by PHD Virtual Technologies, Inc. in the API's documentation as "distributable code" solely as part of Ordering Activity's Software; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party except as designated herein and as necessary to distribute the Software or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of the Software, any additional licensing terms provided by the Software via product documentation, email notification and/or policy change on PHD Virtual Technologies, Inc.'s website, and/or the terms of this Attachment A of Licensor products; or (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware .

SUPPORT OFFERINGS

Contractor through PHD Virtual offers two levels of support for PHD Virtual Backup:

- **Platinum Support** – Provides 24 X 7 support services for **critical production issues** as defined by the severity policy. Platinum support is designed for Ordering Activity running mission critical environments in high availability situations.
- **Gold Support** – Provides 12 X 5 support services during normal business hours. With every new license purchase the first year of gold support is included in the license purchase price.

Contractor through PHD Virtual offers one level of support for PHD Virtual Monitor:

- **Gold Support** – Provides 12 X 5 support services during normal business hours. With every new license purchase the first year of gold support is included in the license purchase price.

Ordering Activity under current support contracts, gold or platinum, are also entitled to free upgrades and patches of PHD Virtual Backup.

Support is not offered for our free product offerings; however a community support forum is available for questions and comments.

Support is provided subject to the terms of the GSA Schedule Contract, including this Attachment A. Without limiting the terms of this Attachment A, PHD Virtual does not guarantee a resolution that is satisfactory to the Ordering Activity.

For issues outside the scope of the PHD Virtual Backup product or other PHD supported products, PHD Virtual will make a best effort to assist, but we make no guarantees on a resolution. Examples include virtualization issues, networking problems, hardware issues, or third party software issues.

Business Hours of Operation

Normal PHD Virtual support business hours of operation are defined as between 8 AM and 8 PM EST.

Support Program Matrix

Feature	Platinum Support	Gold Support
Hours of Support	24 hours per day 7 days per week	12 hours per day 5 days per week (PHD Virtual Business Hours)
Product Upgrades/Updates	Included, no additional charge	Included, no additional charge
Methods of Support	Web/Email/Phone/Support Ticket For off hours support, use the Support Web Page to submit a support request	Web/Email/Phone/Support Ticket
Severity 1 Response Time	4 Hours	4 Hours
Severity 2 Response Time	4 Hours	4 Hours
Severity 3 Response Time	4 Hours – business hours 8 Hours – 24 X 7 coverage	8 Hours
Severity 4 Response Time	Next Business Day	Next Business Day

Severity Levels

The following are severity level definitions for PHD Virtual Support Cases

- **Severity 1** – Issue has a critical business impact. For example, total product failures, systems down, or corrupt or unrecoverable data.
- **Severity 2** – Issue has a significant business impact. For example, situations where product features that are not functioning affect primary and mission critical applications. Although the product is restricted in its availability or function, workaround solutions may exist.
- **Severity 3** – Issue has a minimal business impact. For example, a product feature may not be functioning but a majority of the product’s features and functionality are available. Workaround solutions may exist.
- **Severity 4** – Issues has no business impact. For example, questions about product features, configuration questions, documentation clarification, and feature requests.

Support Issues

Support issues can be opened via the PHD Virtual Web site’s Support page. For each support issue opened, a PHD Virtual Support Engineer will respond within the time period indicated by the support contract and severity level of the problem. A community web forum also exists that can be used to post questions and answers about PHD Virtual products.

- **PHD Virtual Support Web Page** – Support requests can be submitted from the PHD Virtual Web site’s [Support Web page \(http://www.phdvirtual.com/support\)](http://www.phdvirtual.com/support).

To submit a support request, use a browser and go to the PHD Virtual [Support Web page](http://www.phdvirtual.com/support), select your product, and then fill out the required information in the form that opens. After you have entered your information, a unique support issue number is assigned. You can then use the Customer Support Center to view and update issue status.

Platinum users who require support outside of the normal PHD Virtual business hours should use the Support Web page to submit a support request.

- **Forums** – the PHD Virtual product forum (<http://www.phdvirtual.com/forums?func=listcat>) is a web-based community forum that can be used for community discussions about PHD Virtual products, feature requests, and general product information. Note that these forums are not closely monitored by PHD Virtual Support Engineers and they cannot be used to submit support requests. To open a support issue, use the Support Web page.

Contact

Web:

<http://www.phdvirtual.com>

Support:

1---866---790---6840

techsupport@phdvirtual.com

Polycom, Inc.
13650 Dulles Technology Drive
Herndon, VA 20171

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

1. **Scope.** This Rider and the attached **Polycom, 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**

POLYCOM, INC.

POLYCOM, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. **GRANT OF LICENSE.** Subject to the terms of this Attachment A, Contractor grants to you a non-exclusive, non-transferable, revocable license to install and use the SOFTWARE PRODUCT solely on the POLYCOM product with which this SOFTWARE PRODUCT is supplied (the "PRODUCT"). Ordering Activity (herein also referred to as "You" or "Your") may use the SOFTWARE PRODUCT only in connection with the use of the PRODUCT subject to the following terms and the proprietary notices, labels or marks on the SOFTWARE PRODUCT or media upon which the SOFTWARE PRODUCT is provided. You are not permitted to lease, rent, distribute, assign, sell or sublicense the SOFTWARE PRODUCT, in whole or in part, or to use the SOFTWARE PRODUCT in a time-sharing, subscription service, hosting or outsourcing arrangement or in any other unauthorized manner. Further, no license is granted to you in the human readable code of the SOFTWARE PRODUCT (source code). Except as expressly provided below, this Attachment A does not grant you any rights to patents, copyrights, trade secrets, trademarks, or any other rights in respect to the SOFTWARE PRODUCT. You are solely responsible for use of the PRODUCT and the SOFTWARE PRODUCT by your agents, contractors, outsourcers, customers and suppliers and their compliance with this Attachment A.
2. **OTHER RIGHTS AND LIMITATIONS.**
 - 2.1. **Limitations on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, modify or disassemble the SOFTWARE PRODUCT or otherwise reduce the SOFTWARE PRODUCT to human-perceivable form in whole or in part, except and only to the extent that such activity is expressly permitted by a third party license or applicable laws. The foregoing includes but is not limited to review of data structures or similar materials produced by SOFTWARE PRODUCT. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one PRODUCT. You may not use the SOFTWARE PRODUCT for any illegal purpose or conduct.
 - 2.2. **Back-up.** Except as expressly provided for under this Attachment A you may not copy the SOFTWARE PRODUCT; except, however, you may keep one copy of the SOFTWARE PRODUCT and, if applicable, one copy of any previous version, for back-up purposes, only to be used in the event of failure of the original. All copies of the SOFTWARE PRODUCT must be marked with the proprietary notices provided on the original SOFTWARE PRODUCT. You may not reproduce the supporting documentation accompanying the SOFTWARE PRODUCT.
 - 2.3. **No Modifications.** You may not modify, translate or create derivative works of the SOFTWARE PRODUCT.
 - 2.4. **Proprietary Notices.** You may not remove or obscure any proprietary notices, identification, label or trademarks on or in the SOFTWARE PRODUCT or the supporting documentation.
 - 2.5. **Software Transfer.** You may permanently transfer all of your rights under this Attachment A solely in connection with transfer of the PRODUCT, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades or updates, this Attachment A, and, if applicable, the Certificate of Authenticity), and the recipient agrees to the terms of this Attachment A. If the SOFTWARE PRODUCT is an upgrade or update, any transfer must include all prior versions of the SOFTWARE PRODUCT. However, if the SOFTWARE PRODUCT is marked "Not for Resale" or "NFR", you may not resell it or otherwise transfer it for value.
 - 2.6. **Copyright.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, programs and "applets" incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by POLYCOM or its suppliers. Title, ownership rights, and intellectual property rights in the SOFTWARE PRODUCT shall remain in POLYCOM or its suppliers. Title and related rights in the content accessed through the SOFTWARE PRODUCT is the property of such content owner and may be protected by applicable law. This Attachment A gives you no rights in such content.
 - 2.7. **Dual-Media Software.** You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for your single PRODUCT. You may not use or install the other medium on another PRODUCT.

- 2.8. **Reservation of Rights.** POLYCOM and its suppliers reserve all rights in the SOFTWARE PRODUCT not expressly granted to you in this Attachment A.
- 2.9. **Additional Obligations.** You are responsible for all equipment and any third party fees (such as carrier charges, internet fees, or provider or airtime charges) necessary to access the SOFTWARE PRODUCT.
- 2.10. **Additional Software.** You may not install, access, or use any software on the PRODUCT unless such software was provided by or otherwise authorized by POLYCOM. Contractor through POLYCOM may, in its sole discretion and in accordance with this Attachment A or other applicable licenses, allow you to download and install certain support software on the PRODUCT, such as anti-virus software.
- 2.11. **Benchmark Tests.** You may not publish the results of any benchmark tests run on the PRODUCT, SOFTWARE PRODUCT, or any component of the SOFTWARE PRODUCT without written permission from Polycom.
3. **SUPPORT SERVICES.** Contractor through POLYCOM may provide you with support services related to the SOFTWARE PRODUCT ("SUPPORT SERVICES "). Use of SUPPORT SERVICES is governed by the POLYCOM policies and programs described in the POLYCOM-provided materials. Any supplemental software code provided to you as part of the SUPPORT SERVICES is considered part of the SOFTWARE PRODUCT and is subject to the terms and conditions of this Attachment A. With respect to technical information you provide to POLYCOM as part of the SUPPORT SERVICES, POLYCOM may use such information for its business purposes, including for product support and development. POLYCOM will not utilize such technical information in a form that personally identifies you.
4. **UPGRADES.** If the SOFTWARE PRODUCT is labeled as an upgrade or update, you must be properly licensed to use the software identified by POLYCOM as being eligible for the upgrade or update in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade or update replaces and/or supplements the software that formed the basis for your eligibility for the upgrade or update. You may use the resulting upgraded/updated SOFTWARE PRODUCT only in accordance with the terms of this Attachment A. If the SOFTWARE PRODUCT is an upgrade or update of a component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single SOFTWARE PRODUCT package and may not be separated for use on more than one PRODUCT. You shall maintain the SOFTWARE PRODUCT replaced by the upgrade or update solely for use as an archival copy for recovery purposes for the updated PRODUCT.
5. **WARRANTY AND WARRANTY EXCLUSIONS.**
- 5.1. **Limited Warranty.** Contractor warrants that (a) the SOFTWARE PRODUCT will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from the date of shipment by POLYCOM, and (b) any SUPPORT SERVICES provided by Contractor through POLYCOM shall be substantially as described in applicable written materials provided to you by POLYCOM. This warranty is valid only for the original purchaser. CONTRACTOR DOES NOT WARRANT THAT YOUR USE OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SOFTWARE PRODUCT WILL BE CORRECTED. YOU ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE PRODUCT TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE PRODUCT. CONTRACTOR'S OBLIGATION UNDER THIS EXPRESS WARRANTY SHALL BE, AT CONTRACTOR'S OPTION AND EXPENSE, TO REFUND THE PURCHASE PRICE PAID BY YOU FOR ANY DEFECTIVE SOFTWARE PRODUCT WHICH IS RETURNED TO POLYCOM WITH A COPY OF YOUR RECEIPT, OR TO REPLACE ANY DEFECTIVE MEDIA WITH SOFTWARE WHICH SUBSTANTIALLY CONFORMS TO APPLICABLE POLYCOM PUBLISHED SPECIFICATIONS. Any replacement SOFTWARE PRODUCT will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- 5.2. **Warranties Exclusive.** IF THE SOFTWARE PRODUCT DOES NOT OPERATE AS WARRANTED ABOVE, YOUR REMEDY FOR BREACH OF THAT WARRANTY SHALL BE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE PAID, AT CONTRACTOR'S OPTION. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF THE SOFTWARE PRODUCT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM POLYCOM OR THROUGH OR FROM THE SOFTWARE PRODUCT SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS ATTACHMENT A.
- NEITHER CONTRACTOR NOR ITS SUPPLIERS SHALL BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT OR MALFUNCTION IN THE SOFTWARE PRODUCT DOES NOT EXIST OR WAS CAUSED BY YOUR OR ANY THIRD PARTY'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO MODIFY THE SOFTWARE PRODUCT, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, POWER CUTS OR OUTAGES, OTHER HAZARDS, OR ACTS OF GOD.

6. **MISCELLANEOUS.**

- 6.1. U.S. Government Restricted Rights. The software and documentation provided by Polycom pursuant to this Attachment A are “Commercial Items,” as the 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. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to United States Government end users (1) only as Commercial Items and (2) with only those rights as are granted to all other users pursuant to the terms of this Attachment A.
- 6.2. High Risk Activities. The SOFTWARE PRODUCT is not fault-tolerant and is not designed or Intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the SOFTWARE PRODUCT could lead directly to death, personal injury, or severe physical or property damage (collectively, “High Risk Activities”). CONTRACTOR AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.
- 6.3. Third Party Software. The SOFTWARE PRODUCT may be distributed with software governed by licenses from third parties (“Third Party Software” and “Third Party License”). More information on Third Party Licenses included in the SOFTWARE PRODUCT can be found in the documentation for each PRODUCT. Contractor makes no representation or warranty concerning Third Party Software and shall have no obligation or liability with respect to Third Party Software. If the Third Party Licenses include licenses that provide for the availability of source code and the corresponding source code is not included with the PRODUCT, then check the documentation supplied with each PRODUCT to learn how to obtain such source code.

POLYCOM WARRANTY GUIDE

Use the chart below to determine the warranty periods applicable to Polycom’s Limited Warranty for products. The Terms and Conditions are listed on page two.

Product Family	Software Warranty (bug fixes only)	Hardware Warranty (return to factory repair)	Hardware Warranty (repair cycle time)
VIDEO ENDPOINTS			
HDX®	90 days	1 year	30 days
QDX™ 6000	90 days	1 year	30 days
CMA® Desktop	90 days	1 year	30 days
Video peripherals (purchased from Polycom)	90 days	1 year	30 days
VOICE			
PSTN desktop and conference phones	90 days	1 year	30 days
VoIP desktop and conference phones	90 days	1 year	30 days
Communicator products	90 days	1 year	30 days
SoundStructure™ products	90 days	1 year	30 days
Vortex products	90 days	2 years	30 days
UC INTELLIGENT CORE™			
RMX® series	90 days	1 year	30 days
RSS™ 4000, Polycom Accordent Solutions	90 days	1 year	30 days
CMA® and DMA™	90 days	1 year	30 days
VBP® security solutions	90 days	1 year	30 days
TELEPRESENCE and VERTICAL SOLUTIONS			
RPX™, OTX™, and ATX™	90 days	1 year	30 days
Custom products	90 days	1 year	30 days
Halo Series	90 days	1 year	30 days
HARDWARE UPGRADES and RMAS			
All products	90 days or balance of original product warranty period, whichever is longer.	90 days or balance of original product warranty period, whichever is longer.	

THE PRECEDING CHART IS A SUMMARY OF THE WARRANTY PERIODS APPLICABLE TO POLYCOM’S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO POLYCOM’S LIMITED WARRANTY ARE AS SET FORTH BELOW (AND ARE ALSO INCLUDED IN THE DOCUMENTATION PACKAGED WITH NEW POLYCOM PRODUCTS):

LIMITED WARRANTY. Contractor warrants to the end user (“Ordering Activity”) that the product will be free from defects in workmanship and materials, under normal use and service, for one year, or such longer period as Polycom may announce publicly from time to time for particular products, from the date of purchase from Contractor or its authorized reseller. Contractor’s obligation under this express warranty shall be, at Contractor’s option and expense, to repair the defective product or part, deliver to Ordering Activity an equivalent product or part to replace the defective item, or if neither of the two foregoing options is reasonably available, Contractor may, in its discretion, refund to Ordering Activity the purchase price paid for the defective product. All products that are replaced will become the property of Polycom. Replacement products or parts may be new or reconditioned. Contractor warrants

any replaced or repaired product or part for ninety (90) days from shipment, or the remainder of the initial warranty period, whichever is longer.

Products returned to Polycom must be sent prepaid and packaged appropriately for safe shipment, and it is recommended that they be insured or sent by a method that provides for tracking of the package. Responsibility for loss or damage does not transfer to Polycom until the returned item is received by Polycom. The repaired or replaced item will be shipped to Ordering Activity, at Polycom's expense, not later than thirty (30) days after Polycom receives the defective product, and Polycom will retain risk of loss or damage until the item is delivered to Ordering Activity.

EXCLUSIONS. Contractor will not be liable under this limited warranty if its testing and examination disclose that the alleged defect or malfunction in the product does not exist or results from:

- Failure to follow Polycom's installation, operation, or maintenance instructions.
- Unauthorized product modification or alteration.
- Unauthorized use of common carrier communication services accessed through the product.
- Abuse, misuse, negligent acts or omissions of Ordering Activity and persons under Ordering Activity's control; or
- Acts of third parties, acts of God, accident, fire, lighting, power surges or outages, or other hazards.

WARRANTY EXCLUSIVE. IF A POLYCOM PRODUCT DOES NOT OPERATE AS WARRANTED ABOVE, ORDERING ACTIVITY'S REMEDY FOR BREACH OF THAT WARRANTY SHALL BE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE PAID, AT CONTRACTOR'S OPTION. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF ITS PRODUCTS.

POLYCOM SERVICE PROGRAM TERMS AND CONDITIONS

1. Definitions

The following terms shall have the following meanings hereunder:

"Polycom" shall mean Polycom, Inc., Polycom (Netherlands) B.V., Polycom (United Kingdom) Limited, or Polycom Asia Pacific Pte Ltd (each individually referred herein as "Polycom") as applicable.

"Polycom Products" means the Polycom branded products and/or product families generally made available in the marketplace.

"Polycom Reseller" means a value added reseller or distributor authorized to resell Polycom Products.

"Polycom Resource Center" means the Polycom resource center website currently located at <http://extranet.polycom.com>.

"Polycom Web Site" means the Polycom public website currently located at www.polycom.com.

"Service Period" has the meaning given to that term in Section 4 below.

"Services" means the Polycom branded services provided under a relevant Service Program.

"Service Programs" means those Polycom service program offerings defined through Polycom Service Descriptions that are typically made available through the Polycom Resource Center (PRC).

"Software" means those Polycom Products that are software products and any software included with Polycom Products.

"Software Options" means optional functionality or features of Software that may be selected at the time of purchase or at a later time, and for which Polycom charges separately.

"Update" means Software for which Polycom has provided fixes or minor revisions to correct errors or defects in the existing operation of the Software in accordance with the published Product specifications, and which is limited to those updates that Polycom generally provides to its support Services customers at no charge. Updates do not include Upgrades or Software Options.

"Upgrade" means new releases of the Software which contains enhancements improving the functionality or capabilities of the Software, which Polycom makes generally available to its support Services customers. Upgrades do not include Software Options.

2. Service Period. For those Service Programs that cover a Polycom Product for a defined period of time (the "Service Period"), the Service Period shall be the 12-month period (or such other period of time as specified on an Order) beginning on the date of the purchase order (or such other date as specified in the Service Program) for the applicable Service Program.

3. Services Availability. Unless otherwise provided in any Service Program, Services will be provided during Polycom's then-current published ordinary business hours Monday through Friday, exclusive of Polycom holidays.

4. Ordering Activity Obligations.

- a. Ordering Activity (herein also referred to as "You" or "Your") shall have the continuing obligation to keep all Polycom Products under a Maintenance Service Program at either the then-current Software version or previous major Software version release.
- b. If applicable, you will provide Contractor through Polycom personnel with access to the Polycom Products and adequate working space (including heat, light, ventilation, electric current and outlets) at no charge to Polycom. All Ordering Activity environments must be free from all risks to health and safety (except to the extent notified to Polycom in writing and specifically accepted in writing by Polycom).
- c. If applicable, you will maintain, at your expense, the installation site and provide the necessary utility services for use of the Polycom Product in accordance with Polycom's applicable published specifications.
- d. You will be responsible for replacing, at your own expense, any and all consumable items used in connection with the Polycom Products, including without limitation, bulbs and batteries.
- e. Contractor through Polycom strongly recommends that you install and use a current, reputable anti-virus program in connection with any PC-based, open-architecture Polycom Product, and that you regularly update and run such anti-virus program, especially in connection with the emergence of any new viruses and/or 'worms'. Repair or restoration of any Polycom Product damaged or 'infected' by viruses is not covered under this Attachment A or the Service Programs.
- f. You are solely responsible for backing up your data. Contractor through Polycom will not under any circumstances have a duty to back up your data or to restore data that is lost in the course of Polycom's provision of Services, or otherwise. Polycom will not be liable for the loss of your data, whatever the reason for the loss, including without limitation as a result of Polycom's negligence. The preceding limitation applies to any cause of action, whether based in contract, tort, or any other theory.
- g. You are solely responsible for any additional Ordering Activity obligations or responsibilities as identified in an applicable Service Program.

5. Software Updates, Upgrades and Options. For Software covered under a Service Program, you will receive Updates and/or Upgrades as specified in the applicable Service Program description. For the latest Updates and Upgrades available for your Software, if any, please visit the Polycom Resource Center. Updates are provided on a fix on fail basis. That is, to obtain an available Update the customer must call Contractor through Polycom to report a specific customer product failure (identified by Polycom Product serial number) exhibiting a problem, which the Update corrects. Polycom will configure the Update according to the Software record of the registered Polycom Product. Software Options are not provided under any Service Program and must be purchased separately.

6. Replacement Parts. Replacement parts provided pursuant to a Service Program will be either new parts or parts equivalent in performance to new parts when used with the Polycom Product, and are warranted for ninety (90) days from shipment or the remainder of the initial warranty period, whichever is longer. Parts removed from Polycom Products for replacement will become the property of Polycom, and must be received back to the local Polycom service facility (as the same is listed on the pre-addressed return package provided by Polycom) within five (5) business days of receipt of the replacement part, or you will be invoiced the full list price for the replaced part.

7. Service Program Exclusions. Service Programs do not cover any of the following: (i) electrical work external to the Polycom Product; (ii) repair or replacement of damage to or defects in the Polycom Product resulting from causes external to the Polycom Product, including disaster, fire, accident, neglect, misuse, vandalism, water, power surges, lightning, or failure of the installation site to conform to Polycom applicable specifications; or resulting from use of the Polycom Product for other than intended purposes; or use of the Polycom Product with items not provided or approved by Polycom; or resulting from the performance of maintenance or the attempted repair of an item of a Polycom Product by persons other than Polycom employees or persons authorized by Polycom; (iii) furnishing supplies or accessories, or painting or refinishing the Polycom Product; (iv) Services in connection with the relocation of the Polycom Product, or the addition or removal of items of equipment or parts, attachments, features, from or to other devices not furnished by Polycom, including communications devices, video devices, audio devices, networks or links; and (v) Services in connection with computer viruses or conflicts involving software that is not installed or introduced by Polycom.

8. Recertification. If you wish to order a Service Program for a Polycom Product, and such system is not covered by a current Service Program, Contractor through Polycom may require that the Polycom Product pass an inspection and/or re-certification by Polycom and/or that the Polycom Product be brought up to the latest software version level.

9. Intellectual Property. Each party shall retain all right, title and interest in and to, and possession of their respective pre-existing intellectual property. Furthermore, Polycom shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Polycom relating to Services performed under or in relation to a Service Program.

10. WARRANTY.

CONTRACTOR WARRANTS FOR NINETY (90) DAYS FROM THE PERFORMANCE OF ANY SERVICES BY CONTRACTOR THROUGH POLYCOM PURSUANT TO THESE TERMS AND CONDITIONS, EXCLUDING VNOC SERVICES, THAT SUCH SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. POLYCOM MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. CONTRACTOR MAKES NO

WARRANTY THAT OPERATION OF THE POLYCOM PRODUCT SERVICED WILL BE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. ORDERING ACTIVITY MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO CONTRACTOR DURING THE ABOVE WARRANTY PERIOD, AND ORDERING ACTIVITY'S REMEDY AND CONTRACTOR'S LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO RE-PERFORM THE SERVICES, OR IF CONTRACTOR IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, ORDERING ACTIVITY SHALL BE ENTITLED TO RECOVER THE PRORATED FEES PAID TO CONTRACTOR FOR THE NONCONFORMING SERVICES.

Qualtrics, LLC
400 Qualtrics Drive, #100
Provo, UT 84604

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

1. **Scope.** This Rider and the attached **Qualtrics, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
QUALTRICS, LLC**

QUALTRICS, LLC LICENSE, WARRANTY AND SUPPORT TERMS

1.0 Background

Contractor through Qualtrics will provide the Qualtrics Service to Ordering Activity ("Licensee") as an end user customer. Qualtrics will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably required to provide the Qualtrics Service to Licensee. The Qualtrics Service shall be hosted on Qualtrics' servers. Qualtrics may, at its election, outsource the hosting to a trusted third party in the business of hosting Internet services and/or applications.

2.0 License of Qualtrics Service

Contractor grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Delivery Order, to use the Qualtrics Service for Licensee's own internal business purposes.

- 2.1 Access:** During the term of the Delivery Order, provided that Licensee has paid all fees due and owed to Contractor and is in compliance with the terms of this Attachment A, Licensee will be able to access the Qualtrics Service by going to the web site specified in Exhibit 1. The Qualtrics Service will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the Qualtrics Service.
- 2.2 Unauthorized Duplication or Use:** Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the Qualtrics Software or using the Qualtrics Service in violation of this Attachment A. If Licensee discovers any such unauthorized duplication or use, it will promptly notify Contractor through Qualtrics and take commercially reasonable actions to resolve the problem as soon as reasonably possible.
- 2.3 Restrictions:** Licensee is not permitted to sublicense the Qualtrics Software to third parties without written permission of Qualtrics except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

3.0 Support and Maintenance

In consideration of the fees paid by Licensee, as part of the Qualtrics Services, Contractor through Qualtrics will provide the following support and maintenance services:

- 3.1 Technical Support:** Contractor through Qualtrics shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the Qualtrics Service, including the Software. Licensee may telephone or e-mail Qualtrics' offices for support during Qualtrics' regular business hours, 6:00 p.m. Sunday to 6:00 p.m. Friday U.S. Mountain Time (0100 Monday to 0100 Saturday GMT), except U.S. holidays. Qualtrics will respond to telephone calls or e-mails based on the following criteria: (a) the order that such calls or e-mails are received; and (b) the relative importance of such calls or e-mails as reasonably determined by Qualtrics. Qualtrics shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with Qualtrics in providing such documentation and information as Qualtrics may reasonably request, so that Qualtrics can verify and reproduce the reported error. Additionally, Licensee may log on to the support web site to register e-mail requests.
- 3.2 Modifications and Enhancements:** Contractor through Qualtrics may also make modifications to the Qualtrics Service to improve and enhance the Qualtrics Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees' feedback and requests. Qualtrics will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Attachment A at no additional charge. Licensee may also utilize Qualtrics' support web site to make enhancement requests and other special requests.

4.0 Account Managers

Each party shall appoint an Account Manager, as set forth on the signature page. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Qualtrics Service. Either party may change its Account Manager upon written notice to the other party.

5.0 Ownership

Subject to the licenses and rights granted herein, the parties acknowledge that:

- 5.1 As between the parties, Qualtrics owns all right, title and interest in and to the Qualtrics Service, all related software and technology, and all Qualtrics content provided in connection with the Qualtrics Service, including all intellectual property rights in the foregoing. Qualtrics reserves all rights not expressly granted to Licensee in this Attachment A.
- 5.2 Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey recipients in the surveys conducted through the Qualtrics Service ("Data") including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee's survey recipients and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of the Schedule Contract and shall not be utilized by Qualtrics for any purpose other than to perform its obligations under this Attachment A or as agreed to in writing by an authorized representative of Licensee.

6.0 Term and Termination

- 6.1 Term: The initial term of a Delivery Order is one (1) year from the Effective Date. A Delivery Order may be renewed for additional one (1) year term upon mutual agreement in writing.
- 6.2 Effect of Termination: Upon termination of the Delivery Order for any reason, Contractor through Qualtrics shall discontinue providing the Qualtrics Service to Licensee and Licensee shall cease using the Qualtrics Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in section of the Schedule Contract. Within thirty (30) days of the date of termination, Licensee shall pay to Contractor all outstanding undisputed fees due to Contractor as of the effective date of termination. For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of the Delivery Order shall survive.

7.0 Representations and Warranties

- 7.1 By Contractor: Contractor represents and warrants to Licensee that:
 - (a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Contractor is bound;
 - (b) it will comply with the laws, rules and regulations that apply to Contractor in connection with the conduct of its business and its provision of the Qualtrics Service;
 - (c) it will not knowingly infringe on any party's patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any laws, rules, or regulations applicable to Qualtrics or the Qualtrics Service; and
 - (d) it will use commercially reasonable efforts to allow Licensee to access the Qualtrics Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the Qualtrics Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee's system, or (iii) due to other causes outside of the reasonable control of Qualtrics, including without limitation malfunction or cessation of Internet services by any third party network or ISP.
 - (e) it will use commercially reasonable efforts to ensure that updates and/or new releases will not introduce, any program, routine, subroutine, or data (including malicious software or "malware," viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.
 - (f) to the best of Contractor's knowledge, it shall not violate the software as delivered to the Licensee shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which Contractor may have or with any third party, or violate

the privacy of any third party from whom Contractor through Qualtrics may obtain any information in connection therewith.

7.2 By Licensee: Licensee warrants and represents to Contractor that:

(a) it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Licensee is bound;

(b) it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the Qualtrics Service; and

(c) it will not knowingly utilize (or allow utilization of) the Qualtrics Service in any manner prohibited by this Attachment A or written Qualtrics policies provided to Licensee, or reverse engineer or tamper with the security of any Qualtrics computer software.

7.3 Limitation of Warranties: EXCEPT AS SET FORTH IN THIS SECTION 7, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY CONTRACTOR ON AN "AS IS" BASIS. CONTRACTOR DOES NOT WARRANT THAT THE QUALTRICS SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. CONTRACTOR DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS ATTACHMENT A, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

Exhibit 1

- 1. QUALTRICS SERVICE:** Develop and host the survey website which includes all survey development tools, e-mail delivery capabilities, online analysis tools, online survey libraries, tutorials and help facilities.
- 2. SCOPE OF LICENSE:** The term of the license for the Qualtrics Software is one year, beginning on the date below and includes features as outlined below.
- 3. SUPPORT AND TRAINING:** Contractor through Qualtrics will provide online tutorials, phone support and respond to e-mails during normal business hours. Qualtrics will provide a U.S. toll free number that may be used for contacting Qualtrics regarding support issues. As each survey project tends to be uniquely structured the majority of training will occur through telephone and e-mail support. Quarterly training calls may also be scheduled by the Qualtrics Account Manager to discuss and/or demonstrate new features that have been made available by Qualtrics.
- 4. BRANDED SURVEY SITE:** This license will operate under a branded platform, which will be created by Qualtrics. The cost of this branded platform is included in the bid. Any changes to the site and domain are also included in the bid.
- 5. SKINS TO MATCH:** The corporate branded solution comes with skins in a library that can be used to change the look and feel of a survey. Licensee will have the ability to request new skins that will fit their branding.
- 6. REQUESTS:** A "Request" is a server call sent to Contractor through Qualtrics that occurs each time a site intercept code is triggered. Qualtrics will provide information on the number of requests to Licensee each month. In the event Licensee exceeds the number of allotted Monthly Requests by fifty percent (50%), or in the event Licensee exceeds the number of allotted Yearly Requests, Licensee must pay the overage at the current order rate.
- 7. DISTRIBUTION OF USERNAMES AND PASSWORDS:** Contractor through Qualtrics will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.

Red Hat, Inc.
1801 Varsity Drive
Raleigh, NC 27606

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

1. **Scope.** This Rider and the attached **Red Hat, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

RED HAT, INC.

RED HAT, INC. LICENSE, WARRANTY AND SUPPORT TERMS

This U.S. Government Supplement ("Supplement") and the Red Hat Enterprise Agreement (www.redhat.com/licenses/us.html), including its Appendix 1 (http://www.redhat.com/licenses/rhel_us_appendix1.pdf) (Note: Red Hat Learning Services, Training Units, and Consulting Units under Appendix 2, http://www.redhat.com/licenses/rhel_us_appendix2.pdf, are not provided under GSA contracts) ("Enterprise Agreement"), establish the terms and conditions enabling Red Hat, Inc. ("Red Hat") to provide Red Hat Products to U.S. Government agencies, including any "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM (the "Client"). The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

1.0 Enterprise Agreement Section 2.2, Changes to Work and Delays, is replaced with the following: "2.2 Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.243-72 Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987). In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010).

2.0 Enterprise Agreement Section 3.0 Fees:

The following is deleted from Section 3.1, Fees and Expenses: "Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services."

Section 3.2.1 is replaced with the following: If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order in accordance with FAR 52.212-4(g) and FAR 52.212-4(i). Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable.

Section 3.3, Taxes, is deleted in its entirety.

3.0 Enterprise Agreement Section 5.0, Reporting and Inspection:

The following is deleted from Enterprise Agreement Section 5.1, Reporting, "no later than thirty (30) days from the date of the invoice", and replaced with, "as provided in the Agreement".

Enterprise Agreement Section 5.2, Inspection, is replaced with the following: "5.2 Inspection. During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Client security requirements are not met and upon Red Hat's request, Client will run a self assessment with tools provided by and at the direction of Red Hat ("Self Assessment") to verify Client's compliance with this Agreement. Within thirty (30) days from Red Hat's request, Client will finalize the Self Assessment and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Client will make payment to Red Hat or its authorized channel partner for the applicable Services provided with respect to the underreported Units. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

4.0 Enterprise Agreement Section 6, Term and Termination:

Enterprise Agreement Section 6.1 is replaced with the following: “6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of all Order Forms issued hereunder.”

Enterprise Agreement Section 6.2.1: The following is deleted: “Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term.”

Enterprise Agreement Section 6.2.2 is replaced with the following: “6.2.2 Termination shall be governed by the FAR 52.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat and consistent with FAR 52.212-4 (l) Termination for the Government’s Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.”

5.0 Enterprise Agreement Section 8.1: The following is added to Section 8.1, Limitation of Liability: “..., EXCLUDING REPROCUREMENT COSTS. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.”

6.0 Enterprise Agreement Section 9.1: The following is added to Section 9.1, Obligations: “Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.”

7.0 Enterprise Agreement Section 11, Open Source Assurance Program, is deleted in its entirety.

8.0 Enterprise Agreement Section 12, Governing Law/Consent to Jurisdiction, is replaced with the following: “12. Governing Law/Consent to Jurisdiction. The validity, interpretation and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.”

9.0 Enterprise Agreement Section 13 Miscellaneous

Enterprise Agreement Section 13.2, Assignment is replaced with the following: “13.2 Assignment. Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements.”

Enterprise Agreement Section 13.4, Force Majeure is replaced with the following: “13.4 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010).”

Enterprise Agreement Section 13.5, Non-solicitation, is replaced with the following: “13.5 Reserved.”

The third and fourth sentences of Section 13.6, Export and Privacy, are deleted in their entirety.

The following is deleted from Enterprise Agreement Section 13.7, Dispute Resolution, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.”, and replaced with, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued.”

The following is deleted from Section 13.11, Complete Agreement, “of the State of New York and”.

10.0 Enterprise Agreement Section 14, Waiver of Jury Trial, is deleted in its entirety.

11.0 The second paragraph of Appendix 1, Exhibit 1.C, Section 1. is replaced with the following: “If you use any of the Subscription Services or Software associated with JBoss Developer Studio Portfolio Edition for Production Purposes, or use the Red Hat Enterprise Linux Software Subscription entitlement independently of your use of the JBoss Developer Studio Subscription, you will be required to purchase the applicable number of Units of the applicable Software Subscription. Red Hat does not provide Production Support or Development Support for JBoss Developer Studio Portfolio Edition.”

12.0 Red Hat Products purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by “terms of use” (e.g. https://access.redhat.com/site/help/terms_conditions.html) (“Red Hat Portal Terms of Use”). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.

Riverbed Technology, Inc.
501 Second Street, Suite 410
San Francisco, CA 94107

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

1. **Scope.** This Rider and the attached **Riverbed Technology, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - 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**

RIVERBED TECHNOLOGY, INC.

RIVERBED TECHNOLOGY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. These terms and conditions ("Attachment A") shall apply to the sale or license of Products or Services from Contractor to the customer on the applicable Order ("Ordering Activity"). This Attachment A constitutes the agreement between Contractor and Ordering Activity with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. "Products" are Riverbed's currently generally available products, including hardware, software and documentation, listed on Contractor's GSA price list. "Services" means Riverbed's currently generally available maintenance and support services and any professional services listed on Contractor's GSA price list or that are otherwise sold to Ordering Activity hereunder. "Software" means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.
2. Ordering Activity will purchase from Contractor the Products and/or Services by submitting a written purchase order to Contractor (an "Order"). The terms and conditions of this Attachment A will apply to the Order and supersede any different or additional terms on Ordering Activity's purchase orders. The Products and Services are not for resale.
3. Contractor warrants to Ordering Activity that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Contractor warrants to Ordering Activity that the Products, upon original shipment by Contractor, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Contractor of the nonconforming Product (but not replacements). Products obtained from Contractor that do not comply with the warranty and are returned by Ordering Activity to Contractor during the warranty period (and for which a Contractor through Riverbed RMA has been issued) will be repaired or replaced at Contractor's option. Contractor will bear the cost of freight and insurance for return of goods to Ordering Activity. If Contractor cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Ordering Activity therefor will be credited to Ordering Activity. Contractor MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Ordering Activity's remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.
4. Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement, Exhibit A herein, that governs use of the Software solely for Ordering Activity's internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Ordering Activity will not) modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government ("U.S. Government"), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

Subject to Ordering Activity's compliance with all terms of this Attachment A and payment of Contractor's support and maintenance fees for the level of Riverbed support purchased (i.e., Silver Gold, or Platinum Level), Contractor through Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located under Exhibit C herein ("Support Services"). Contractor through Riverbed will not provide, and Ordering Activity will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Ordering Activity will not escalate calls to Contractor through Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to

Contractor. Contractor obligations under any Support plan with respect to any Product is subject to payment of applicable Support fee's. The purchase or renewal of Support for any Product purchased by Ordering Activity requires the purchase or renewal of Support for all Products purchased by Ordering Activity. Riverbed retains ownership of any intellectual property resulting from Services. Ordering Activity may renew Support by submitting an Order for renewal of that Support. Ordering Activity may purchase annual Support for a Product that provides for one (1) to five (5) years of support subject to Riverbed's end of sale policy at www.riverbed.com/supportpolicy. If Ordering Activity purchases Support for a Product that provides for more than one year of support, the support period in excess of one year may be cancelled by Ordering Activity at any time without cause by providing written notice to Contractor, and any unused, prepaid amount (reduced by the amount of any additional discount provided because Ordering Activity purchased more than one (1) year of Support) will be refunded to Ordering Activity within 45 days of Contractor's receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Contractor will refund two years of prepaid, unearned support. All obligations of Contractor to provide support services will be terminated on receipt of the cancellation notice.

EXHIBIT A – LICENSE AND PRODUCT WARRANTY TERMS

- 1. LICENSE GRANT.** Subject to the terms of this Attachment A and provided Ordering Activity has paid the applicable fees, Contractor hereby grants Ordering Activity a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use or access the Product solely for Ordering Activity's internal business use in accordance with the Riverbed documentation that accompanies it and any other use restrictions applicable for that Product, including without limitation any additional use restrictions set forth as Exhibit B herein. Except as expressly set forth in Exhibit B herein, Ordering Activity may use each licensed copy of the Software only as embedded in or for execution on a specific unit (or replacement thereof) of Riverbed hardware ("Hardware") owned or leased by Ordering Activity (including any units of replacement Hardware provided as part of warranty or support services). Ordering Activity may copy configurations of the Software solely for backup purposes. Without granting any additional licenses hereunder, Ordering Activity may authorize its contractors and outsourcers to use or operate the Products solely on Ordering Activity's behalf and provided Ordering Activity obtains such third parties' binding consent to abide by the terms of this Attachment A and provided Ordering Activity shall be responsible for such parties' use and compliance. Such parties are not, and shall not be deemed to be, third party beneficiaries under this Attachment A for any reason. See Exhibit B for any additional Product or service specific use rights or restrictions or limitations.
- 2. LICENSE RESTRICTIONS.** Except as permitted by this Attachment A, Ordering Activity shall not, nor authorize anyone else to, directly or indirectly: (i) copy, modify, or distribute the Product; (ii) reverse engineer, disassemble, decompile or attempt to discover the source code or structure, sequence and organization of the Product (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited); (iii) rent, lease, or use the Product for timesharing or service bureau purposes for third parties, or otherwise use the Product on behalf of any third party; or (iv) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities. Notwithstanding anything to the contrary herein, Ordering Activity may utilize the Software pursuant to a leasing arrangement whereby the Ordering Activity leases the Product from a third party. Ordering Activity shall maintain and not remove or obscure any proprietary notices on the Product. As between the parties, title of and all ownership rights in the intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Riverbed and its suppliers or licensors. The Software is protected by the copyright laws of the United States and international copyright treaties. This Attachment A does not give Ordering Activity any rights not expressly granted herein.
- 3. GOVERNMENT USE.** If Ordering Activity is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Attachment A. All other use is prohibited.
- 4. SUPPORT AND UPGRADES.** This Attachment A does not entitle Ordering Activity to any support, upgrades, patches, enhancements or fixes for the Product (collectively, "Support"). Ordering Activity must make separate arrangements for Support and pay any fees associated with such Support. Any software upgrades, patches, enhancements or fixes provided as part of Support for the Software that may be made available by Contractor through Riverbed shall become part of the Software and subject to this Attachment A. The terms of Riverbed's standard support services are located under Exhibit C herein.

Product Warranty Statement

STANDARD WARRANTY; WARRANTY DISCLAIMER. Contractor warrants only to Ordering Activity that the Products, when shipped by Contractor, will conform in all material respects to the applicable published specifications for such Products. Such warranty does not apply to units that have been damaged, mishandled, mistreated or used or maintained or stored other than in conformity with such specifications and Contractor's instructions. EXCEPT FOR BODILY INJURY, ORDERING ACTIVITY'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CONTRACTOR'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CONTRACTOR FOR RETURNED NON-CONFORMING UNITS OF PRODUCT FOR WHICH FULL DOCUMENTATION AND PROOF OF NON-CONFORMITY IS PROVIDED TO CONTRACTOR (AND FOR WHICH A SUPPLIER RMA HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF HARDWARE COMPONENT, OR NINETY DAYS IN THE CASE OF SOFTWARE (WHETHER OR NOT EMBEDDED), AFTER THE ORIGINAL NON-CONFORMING UNITS (BUT NOT REPLACEMENTS) ARE SHIPPED BY CONTRACTOR. SUCH REFUND SHALL BE PAID TO THE ORDERING ACTIVITY MAKING THE WARRANTY CLAIM. EXCEPT FOR THE FOREGOING, CONTRACTOR PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF

ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS ATTACHMENT A. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY. THE PRODUCT IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL.

EXHIBIT B – ADDITIONAL USE RIGHTS

1. The following additional terms apply to any Riverbed products designated as a “spare” or “cold spare”:

If a Riverbed product is being provided as a “spare” or “cold spare” as identified at the time of sale or on Contractor’s GSA price list (“Spare”), then such Spare is provided solely as a replacement unit and is not supplied for independent productive use. Ordering Activity agrees to use any Spare solely for replacement of a fully licensed product that is no longer operational and has been disconnected from Ordering Activity’s network and power supply. Ordering Activity must contact Riverbed Support to transfer any applicable support service plans from the fully licensed product to the Spare. Upon replacement, the Spare shall become a fully licensed product subject to this Attachment A terms, whereupon the product removed from production shall become a Spare. Any use by Ordering Activity contrary to the foregoing is prohibited.

2. The following additional terms apply to any Riverbed products designated as a “lab unit” or “lab product” or “development license”:

If a Riverbed product is being provided as a “lab unit” ,“lab product” or “development license” as identified at the time of sale or on Contractor’s GSA price list (“Lab Unit”), then such Lab Unit is provided solely for Ordering Activity’s internal lab testing and not in a production environment. Lab Units may not be resold or transferred or used for the benefit of any third party. Any use by Ordering Activity contrary to the foregoing is prohibited.

3. Steelhead Mobile client software:

Steelhead Mobile client software may be copied onto Ordering Activity’s laptops or other personal computers, provided that the total number of concurrent users does not exceed the number of concurrent user licenses acquired by Ordering Activity.

4. CMC-VE software:

Each instance of CMC-VE software licensed by Ordering Activity may be (a) installed on a single server or cluster of servers operating as a single entity running a supported operating system or computing platform and used in production to manage Riverbed devices, and (b) installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary server or server cluster specified in (a) above fails. Only one copy of a single CMC-VE instance may be running or used at any time. Ordering Activity may use CMC-VE software instance(s) purchased by Ordering Activity to manage Riverbed devices only up to the total number of CMC-VE management licenses purchased by Ordering Activity, and CMC-VE management licenses can only be used with a single CMC-VE instance at a time. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes. For Ordering Activities who are using CMC-VE software to manage Riverbed devices used to deliver a managed or outsourced service to its end customers, such CMC-VE software may not be resold, transferred, sublicensed or distributed to the end customer, and each instance of such CMC-VE software may be used to manage Riverbed devices for only one end customer.

5. Virtual Steelhead software:

Each instance of Virtual Steelhead software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Virtual Steelhead instance may be running or used at any time. Provided that the Virtual Steelhead software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Steelhead software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Steelhead software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Virtual Steelhead instance(s) purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

6. AirPcap, Pilot PE, Cascade Pilot, WiFi Pilot:

Each instance of Software may be installed on a single server or device and only one copy of a single software instance may be running or used at any time.

7. Whitewater:

Each instance of Virtual Whitewater software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Virtual Whitewater instance may be running or used at any time. Provided that the Virtual Whitewater software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Whitewater software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Whitewater software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use the Whitewater appliance and Virtual Whitewater instance(s) purchased by Ordering Activity to transmit data to and from designated service provider cloud environments up to the number of terabytes licensed by Ordering Activity from Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

8. Cloud Steelhead:

Each instance of Cloud Steelhead software licensed by Ordering Activity (a) may be installed in either a designated service provider cloud environment or at a Ordering Activity site, and may be used for the term of the license purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance, (b) includes access to Riverbed's Cloud Portal and use of Riverbed's Discovery Agent software, which may be used for the term of the license purchased by Ordering Activity, and (c) includes Riverbed's then standard software maintenance and support services, as described in [Exhibit C herein](#), for the term of the license purchased by Ordering Activity. With respect to any instances of Cloud Steelhead software installed at a Ordering Activity site, such Cloud Steelhead software may only be used to optimize traffic between such Ordering Activity and the Ordering Activity's designated service provider cloud environment and cannot be used solely to optimize traffic on such Ordering Activity's network.

9. Stingray Aptimizer Software:

Each instance of the Stingray Aptimizer software licensed by Ordering Activity may be installed on a single server that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Use of each instance(s) purchased by Ordering Activity is limited to the type and scope of use licensed by Ordering Activity as specified in the applicable Product description as follows: (a) SharePoint Aptimizer software may be used to accelerate SharePoint, for the Ordering Activity's internal intranet on a per seat basis, or the Ordering Activity's external facing website up to a designed number of unique visitors per day, (b) Website Aptimizer software may be used to accelerate designated Ordering Activity websites, up to a designed number of unique visitors per day or on a per server basis. Provided that the software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

10. Stingray Traffic Manager and Application Firewall Software:

Each instance of Stingray Traffic Manager or Application Firewall software (including software and virtual appliances) licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Stingray instance(s) purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

11. Stingray Traffic Manager Software, Term License:

Each instance of Stingray Traffic Manager software licensed by Ordering Activity on a term basis may be installed in either a designated service provider cloud environment or at a Ordering Activity site installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"), and may be used for the term of the license purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Each such instance includes Riverbed's then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed.

EXHIBIT C – MAINTENANCE AND SUPPORT SERVICES

1. Software Maintenance

- a. Software Updates. Ordering Activity shall be entitled to receive, and Contractor through Riverbed shall provide Ordering Activity e-mail notification of, all maintenance releases, updates and upgrades to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed's Support Services Ordering Activities. The contents of all maintenance releases and updates shall be decided upon by Riverbed in its sole discretion. Ordering Activity may obtain updates by downloading the updates from Riverbed's Support care website (support.riverbed.com). Product software maintenance releases and updates may only be installed on Products that are covered by then current support and maintenance services. Any such software provided by Riverbed shall be subject to this Attachment A.
- b. Supported Software. Contractor through Riverbed supports the current major release of Product software, plus certain prior versions of software in accordance Riverbed's support policy available at: www.riverbed.com/supportpolicy.
- c. Error Corrections. Contractor through Riverbed shall use its reasonable efforts to correct any reproducible programming error in the Product software attributable to Riverbed with a level of effort commensurate with the severity of the error, provided that Riverbed shall have no obligation to correct all errors in the Product software. Upon identification of any programming error, Ordering Activity shall notify Riverbed of such error and shall provide Riverbed with enough information to reproduce the error. Riverbed shall only be responsible for correcting errors that are (1) attributable to Riverbed and (2) reproducible by Riverbed on unmodified Product software as delivered to Ordering Activity.

2. Hardware Replacement

- a. Return Material Authorization. Before returning any Product, Ordering Activity must contact Riverbed Support and obtain a Return Material Authorization (RMA) number by calling the designated support telephone number or logging a request via the Support website. If Riverbed Support verifies that the Product is likely to be defective, Contractor through Riverbed will issue Ordering Activity an RMA number, which allows Ordering Activity to return the defective unit to Riverbed for repair or replacement.
- b. Shipping. Contractor through Riverbed cannot accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with the RMA number to Riverbed. If Ordering Activity ships the Product on their own account, Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent); Ordering Activity will be responsible for any damage in transit if Ordering Activity fails to use adequate packaging. Riverbed will provide Ordering Activity with the shipping address at the time of RMA issuance. Responsibility for shipping costs, both return shipping from the Customer to Riverbed and Riverbed's shipment of replacement Products to Ordering Activity, shall be as set forth in Table 1 below.

Table 1: Service Contract Shipping Cost Responsibilities

Region		Silver		Gold		Gold Plus		Platinum		Dead on Arrival	
		Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer
North America	To Customer	x		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Latin America	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
EU States	To Customer	X		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Non EU States, MEA	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
APJ	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	

- c. Repair or Replace. Contractor through Riverbed may replace or repair the Product with either a new or reconditioned Product.
- d. Dead on Arrival Products: For RMAs that are issued by Contractor through Riverbed within the first thirty (30) days after original Product shipment, Riverbed will ship a new (not refurbished) advance replacement unit via express delivery; such Product may be shipped from Riverbed's manufacturing facilities. In such circumstance,

Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm PST USA by Riverbed will be shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

- e. **Silver-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed within the first ninety (90) days after original Product shipment, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations. For RMAs that are issued by Riverbed after the first ninety (90) days after original Product shipment, at Ordering Activity's request, Riverbed will ship a replacement unit within ten (10) business days via ground delivery once Riverbed confirms receipt of the defective unit at the shipping address designated by Riverbed at the time of RMA issuance.
- f. **Gold-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.
- g. **Gold-Plus-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will deliver replacement Product to the applicable installation location within 4 hours, 24 hours per day, 7days per week, provided that the delivery time may be greater than 4 hours based on the location, and 4 hour coverage may only be available during business hours in some locations. Please contact Riverbed to determine if Gold Plus support is available in your area, and if it is, the applicable Product delivery time. Riverbed will use reasonable endeavors to establish service spares close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Ordering Activity from Silver or Gold to Gold Plus support; Product delivery times may be impacted until such service spares are established. Gold Plus may not be available at the new location or the delivery time may be impacted.
- h. **Platinum-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will either (a) ship an advance replacement unit via express delivery, or (b) provide on-site Product repair or replacement within 4 hours, provided that the on-site response time may be greater than 4 hours based on the location. Please contact Riverbed to determine if on-site support is available in your area, and if it is, the applicable on-site response time. Riverbed will use reasonable endeavors to establish service spares and trained local field engineers close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Customer from Silver or Gold to Platinum support; on-site response times may be impacted until such service spares and local field engineers are established. If the Product is shipped to Ordering Activity for next business day delivery, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

3. Ordering Activity Support

- a. **Support.** Contractor through Riverbed will provide Ordering Activity with technical support by the following methods: World Wide Web, email and telephone. Such support will include:
 - i. Assistance related to questions on the installation and operational use of the Product;
 - ii. Assistance in identifying and verifying the causes of suspected errors in the Product; and
 - iii. Providing workarounds for identified Product errors or malfunctions, where reasonably available to Riverbed.
 - iv. Ordering Activity will designate the contact information of two named individuals to act as support liaisons to utilize the support and will ensure that such persons will be properly trained in the operation and usage of the Product; Riverbed will not be obligated to provide support or maintenance services to any other individuals. Ordering Activity agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Ordering Activity regarding the Product. Ordering Activity also agrees to promptly implement all updates and error corrections provided by Riverbed under this Attachment A. Upon request, Ordering Activity will provide access for on-line diagnostics of the Product during error diagnosis.
- b. **Support Web Site.** Contractor through Riverbed may provide Ordering Activity with an authorized account to access Riverbed's Support website. Riverbed may make available the following services through its Support web site:
 - i. Product software releases that can be downloaded by Ordering Activity;
 - ii. Documentation for Product;
 - iii. Issuing trouble reports identified by Ordering Activity through Riverbed's Support website;
 - iv. Issuing suggestions for enhancements through Riverbed's Support website.
- c. **Telephone Support.** Telephone support shall include Direct Hotline Support. Ordering Activity may contact Support directly 7x24 via telephone at 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381.

d. Special Services. Ordering Activity may request maintenance and support services not specifically provided for in this Attachment A.

4. Product Obsolescence

Riverbed's End of Sale and End of Support policy is available at: www.riverbed.com/supportpolicy.

5. Support Service Levels

A problem is defined as a situation where the software does not function as intended. The detail below defines priority levels of each problem type. Contractor through Riverbed will use commercially reasonable efforts to provide the service level responses included below.

Priority 1

- Definition: A catastrophic problem that severely impacts the Ordering Activity's ability to conduct business. This may mean that the Ordering Activity's systems and/or Product are down or not functioning and no procedural workaround exists.
- Riverbed Response: Contractor through Riverbed to respond within one (1) hour. The objective is to get the Ordering Activity back on line within 24 hours and to downgrade the problem severity accordingly. Efforts to isolate, diagnose, and deliver a work-around or repair shall be continuous. When the severity level has been changed to "Priority 2" or "Priority 3," the appropriate guidelines should be followed.

Priority 2

- Definition: A high-impact problem in which the Ordering Activity's operation is disrupted but there is capacity to remain productive and maintain necessary business-level operations. The problem may require a fix be installed on the Ordering Activity's system prior to the next planned commercial release of the software.
- Riverbed Response: Contractor through Riverbed to respond within four (4) hours following receipt of a call. Efforts to isolate, diagnose, and deliver a work-around or repair problems shall be continuous during business hours.

Priority 3

- Definition: A medium-to-low impact problem that involves partial loss of non-critical functionality. The problem impairs some operations but allows the Ordering Activity to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Ordering Activity's operation.
- Riverbed Response: Contractor through Riverbed to respond within eight (8) hours following the receipt of a call. Action should be appropriate to the nature of the escalation.

Priority 4

- Definition: Minor problems: all other errors. This includes documentation errors. The inconvenience is slight and can be tolerated.
- Riverbed Response: Contractor through Riverbed to respond within the next business day following the receipt of a call during normal business hours. Riverbed's support organization will respond in a manner appropriate to the nature of the call.

6. Escalation Procedures

If problems are not responded to as targeted above, Ordering Activity may escalate the issue to appropriate Riverbed management personnel. Contractor through Riverbed provides systematic escalation management to Ordering Activity with current service plans. The Riverbed escalation process notifies levels of management throughout the life cycle of the technical issue. This ensures that the appropriate resources resolve outstanding technical problems as efficiently as possible.

SEVERITY	NOTIFICATIONS		
	Escalation Engineer	Manager	Executive Staff
1. Critical	Within 1 Hour	1 Hour	4 Hours
2. High	Within 4 Hours	8 Hours	24 Hours
3. Minor	Within 8 Hours	Weekly	N/A
4. Informational	Within 24 Hours	N/A	N/A

To escalate a case, email support@riverbed.com or call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381. A case follows this escalation path: Support Engineer to Local TAC Manager to Regional Support Director to Director of Support Operations to VP Support.

7. Continuous Support Coverage

Regardless of where the case originates, Riverbed Support endeavors to solve the case when it is opened. The Support team uses a "follow the sun" process to hand-off cases between different Support Centers.

For example, between Monday and Friday, 8 AM - 5 PM GMT, a case from Europe will be routed to the Amsterdam Support Center. After regular business hours in Europe, the case may be routed to the New York or San Francisco Support Center, when the Amsterdam office is closed. If the case remains open, it is passed back to the Amsterdam Support Center for the beginning of their next business day.

8. Case Handling

Contractor through Riverbed is committed to ensuring Ordering Activity success and satisfaction. All support services professionals are rigorously trained on Riverbed products, their underlying technologies, and industry leading technical problem-solving methodologies. Case handling follows these steps:

An Ordering Activity can open a case in one of the following ways:

- call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381
- send an email to support@riverbed.com
- generate a ticket directly from the Riverbed Support web site support.riverbed.com

When Ordering Activities open a case, they should be prepared to provide the following:

- Serial number of hardware component with issue
- Detailed description of the problem
- Priority level and impact of the problem
- Indication of the activity that was being performed when the problem occurred
- Software version
- Configuration data

Once a case is submitted, the issue is assigned to an escalation engineer (“EE”). Every EE is trained to perform extensive troubleshooting to quickly resolve the issue. All opened cases are tracked in Riverbed’s online support tracking system. While working to resolve an issue, the EE may need to access information on the Ordering Activity system relative to the failure, or may need to recreate the failure to get additional information. If the problem is related to the system configuration, the Ordering Activity may be asked to provide a network diagram and configuration information. If the Ordering Activity and the EE agree, the Ordering Activity may send log files or trace files to Riverbed through email or upload them to the Riverbed Support FTP site for further review.

Note: Any information sent to Riverbed to help resolve Ordering Activity problems is treated as confidential.

A case is closed when all parties agree the reported issue has been resolved. If the Ordering Activity issue is determined to be an enhancement, a Feature Request is entered into the Riverbed defect tracking system. A Feature Request is handled and processed by Product Management and Engineering.

Consistently improving quality of service is a very high priority within Riverbed. After closing a case, a survey is sent to the Ordering Activity asking for feedback as to how the case was handled and where Riverbed can improve. Ordering Activity Support managers and executives review the survey responses, and take action where appropriate. Individual entries in this survey may be shared on the Support website anonymously, but identifiable submitter details are not shared. Individual entries will not be used for marketing purposes. The sole purpose of these survey results is to evaluate and improve Riverbed services.

9. Restrictions

Ordering Activity is entitled to receive Support Services only on Products for which Ordering Activity has purchased Support Services; Support Services commence upon sale of the applicable Product by Riverbed. Contractor through Riverbed will not be obligated to provide any Support Services: (1) on Products that: (a) have been altered, modified, mishandled, or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with Riverbed’s specifications, documentation and instructions, or (c) have been misused or operated outside of the environmental specifications for that Product; (2) where the problem relates to Ordering Activity’s or a third party’s network, systems, hardware, software, or other problem beyond the reasonable control of Riverbed; or (3) to any geographic location or to any customers in violation of applicable laws or regulations. Ordering Activity acknowledges and agrees that Riverbed’s ability to provide Support Services is dependent on Ordering Activity providing accurate Product installation location information, and any failure to do so may impact Riverbed’s ability to provide the Support Services. Remote access to the Products on Ordering Activity’s network may be required to diagnose or resolve a support problem, and Ordering Activity’s failure to provide such access may impact Riverbed’s ability to resolve the support problem. Riverbed will not be responsible for any Product replacement or repair delays caused by Riverbed’s compliance with export/import laws and regulations. Riverbed’s obligations under any Support Service plan with respect to any Product is subject to Riverbed’s receipt of the applicable annual Support Services fee. Riverbed retains ownership of any intellectual property resulting from Support Services.

Salesforce.com
The Landmark @ One Market, Suite 300
San Francisco, CA 94105

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

1. **Scope.** This Rider and the attached **Salesforce.com** (“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
SALESFORCE.COM**

SALESFORCE.COM LICENSE, WARRANTY AND SUPPORT TERMS

"AppExchange" means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.

"Reseller" means EC America, Inc.

"Service" means the online, Web-based application provided by SFDC via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.

"SFDC" means salesforce.com, inc. and its affiliates.

"Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Service, and are identified as third-party applications, including but not limited to those listed on the AppExchange.

"User Guide" means the online user guide for the Services, accessible via <http://www.salesforce.com>, as updated from time to time.

"Users" means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by You (or by Salesforce.com or Your Reseller at Your request).

"You" and "Your" means the entity which has contracted to purchase subscriptions to use the Service subject to the conditions of these SFDC Service Terms.

"Your Data" means all electronic data or information submitted by You to the Service.

1. Use of Service.

- (a) User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service).
- (b) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and shall notify Your Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Service.
- (c) You shall use the Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Users or as otherwise contemplated by these SFDC Service Terms; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.
- (d) You shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on Your own intranets or otherwise for its own internal business purposes; (iii) reverse engineer the Service; or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Service.

2. Service Provision. SFDC will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which SFDC shall give at least 8 hours notice via the Services and which SFDC shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond SFDC'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 SFDC employees), or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.
3. Third-Party Products and Services. Any acquisition by You of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. SFDC does not warrant or Support third-party products or services, whether or not they are designated by SFDC as “certified” or otherwise.
 4. Integration with Third-Party Applications. If You install or enable Third-Party Applications for use with the Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third Party Applications with the Service. Salesforce.com shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. In addition, the Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Service features on reasonable terms, SFDC may cease providing such Service features without entitling You to any refund, credit, or other compensation.
 5. Proprietary Rights. Subject to the limited rights expressly granted hereunder, Salesforce.com reserves all rights, title and interest in and to the Service, including all related intellectual property rights. The Service is deemed Salesforce.com confidential information, and You will not use it or disclose it to any third party except as permitted in these SFDC Service Terms.
 6. Your Data. As between Salesforce.com and You, You exclusively own all rights, title and interest in and to all of Your Data. Your Data is deemed your confidential information.
 7. Compelled Disclosure. If either You or Salesforce.com is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party’s cost, if the other party wishes to contest the disclosure.
 8. Suggestions. You agree that Salesforce.com 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 You or Your Users relating to the operation of the Service.
 9. Fees. Contracted for fees for use of the Service represent a firm commitment: i.e., an order cannot be canceled during the term of the subscriptions, and the number of User subscriptions contracted for cannot be reduced in the middle of a subscription term.
 10. Data Storage. You are entitled to a cumulative amount of storage per User subscription for no additional charge as set forth in the User Guide for the Service subscription type purchased. You may purchase additional storage if necessary, and you may contact Your Reseller for then-current rates.
 11. No Warranty. SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE AND/OR SUPPORT, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT YOUR AGREEMENT WITH YOUR RESELLER PROVIDES ANY WARRANTIES WITH RESPECT TO THE SERVICE AND/OR SUPPORT, SUCH WARRANTIES ARE SOLELY BETWEEN YOU AND YOUR RESELLER.
 12. No Liability. IN NO EVENT SHALL SALESFORCE.COM HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT EITHER YOU OR SALESFORCE.COM HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 13. Further Contact. Salesforce.com may contact you regarding new Salesforce.com service features and offerings.
 14. Third Party Beneficiary. SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to these SFDC Service Terms.

SAP NS2
6903 Rockledge Drive, 10th Floor
Bethesda, MD 20817

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

1. **Scope.** This Rider and the attached **SAP NS2** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

SAP NS2

SAP NS2 LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

"Chip" Electronic circuitry containing one or more Cores, usually on a silicon wafer.

"Chip License", or "CH" The limited right to install the Program on a Chip and to Use such Program in a production environment.

"Chip Development and Testing License" or "DH" The limited right to install the Program on a Chip and to Use such Program for development and testing purposes only and not in a parallel production environment. See "Chip" and "Chip License".

"Chip Standby License" or "SH" The limited right to access and Use a Standby Copy of a Program licensed under a Chip License in the event of an interruption of a production copy of the same Program. See "Chip", "Chip License".

"Cluster License", or "CL" The limited right to Use the Program on any number of Servers at the single physical location specified for such license in the applicable Purchase Order, but only if each such Server is part of a load-balanced or failover configuration and in the aggregate provides no greater access to the Program or any associated data than would be provided by a single Server operating alone.

"Concurrent User" or "CU" A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant ("PDA"), wireless device or real time device. See "Concurrent User License".

"Concurrent User License" The limited right for a maximum number of Concurrent Users equal to the quantity of such licenses purchased, as indicated in the applicable Purchase Order, to directly or indirectly access the Program on a single specified licensed Server at any given instant in time.

"Core" A functional unit within a computing device that interprets and executes software instructions.

"CPU" The unit of measurement used in the CPU License type (see "CPU License") and the Internet Access License type (see "Internet Access License"). Unless otherwise specified on the Purchase Order, for Sybase Programs, the number of CPUs is equal to the number of Processors or Cores on a Machine, and for iAnywhere Solutions Programs, the number of CPUs is equal to the number of Chips on a Machine irrespective of the number of Processors or Cores.

"CPU Development and Testing License" or "DT" The limited right to install the Program on a Machine on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Purchase Order, and to Use such Program for development and testing purposes only and not in a parallel production environment. See "CPU" and "CPU License".

"CPU License" or "CP" The limited right to install the Program on a Machine on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Purchase Order. The number of Seats that may access the Program shall be limited only by the capacity of the licensed CPUs, and may include internal usage by Seats within the Ordering Activity's organization, and external usage by Seats outside of the Ordering Activity's organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Ordering Activity's applications. The license fee payable by Ordering Activity for each copy of the Program installed on a Machine shall be determined by multiplying the number of CPUs on the Machine by the applicable rate, each as specified on the Purchase Order. In the event that the number of CPUs on the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the GSA Price List.

"Data Storage Unit" or "DSU" The unit of measurement used in the Storage License types which quantifies the volume of data stored inside the main database of a Program. Certain Programs tend to compress data to an amount less than the raw data. The amount of compression applied to the data may vary depending on the characteristics of the data and the data types Used in the Program.

"Documentation" Installation instructions and user manuals supplied with the Program.

"ESD" means Electronic Software Download.

"Floating License" or "FL" The limited right to install the Program on any number of workstation Machines, provided that at any given instant in time the total number of such workstation Machines on which Ordering Activity is permitted to Use the Program simultaneously may not exceed the number of licenses purchased.

"Internet Access License" or "IC" The limited right to permit "External Internet Seats" to access a licensed Program, provided the number of CPUs on the Machine on which the licensed Program is installed is no greater than the quantity of such licenses purchased, as specified on the Purchase Order. The number of "External Internet Seats" shall be limited only by the capacity of the licensed CPUs. "External Internet Seats" shall mean Seats which access the specified Program via the Internet; provided that the person at such Seat is not acting in the capacity of an employee, agent or independent contractor of Ordering Activity. External Internet Seats may query the Program database and update such database to the extent allowed by Ordering Activity's application, but may not Use the Program to develop or modify applications or perform other programming tasks. Ordering Activity may not Use the specified Program in connection with a website hosted by Ordering Activity on behalf of third parties. An Internet Access License does not cover intranet usage or other internal usage and Ordering Activity must acquire the necessary Seat licenses for all internal usage of the Program. If Ordering Activity purchases (or renews) Support for a Program for which an Internet Access License has been obtained, Ordering Activity shall purchase the same level of Support for the Internet Access License as for such Program. The license fee payable by Ordering Activity for each copy of the Program installed on a Machine shall be determined by multiplying the number of CPUs on the Machine by the applicable rate, each as specified on the Purchase Order. In the event that the number of CPUs on the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the GSA Price List.

"Machine" A single computer hardware system identified on the applicable Purchase Order running a single copy of the Operating System Software.

"Mainframe Base" or "MB" The basic license fee applicable for certain mainframe Programs based upon the mainframe Machine model set forth in the applicable Purchase Order. For each copy of a Program designated as license type MB, Ordering Activity shall also pay the applicable MSU License fee based upon the then current MSU rating of the mainframe Machine. See also "MSU (Millions of Service Units) License".

"Major Version" A major release of a Program containing new features and functions.

"MSU (Millions of Service Units) License" or "MU" The license fee payable by Ordering Activity for each copy of the Program shall be determined by multiplying the number of MSUs for the Machine by the applicable rate and adding the applicable Mainframe Base rate thereto, all as specified in the applicable Purchase Order. In the event that the number of MSUs for the Machine is increased, Ordering Activity shall report such increase, execute a new Purchase Order, and pay an additional amount determined by multiplying the incremental number of MSUs by the then applicable MSU rate for the Program and adding any incremental base rate fee thereto, all as set forth in the GSA Price List. The number of users shall be limited only by the capacity of the licensed MSUs, and may include internal users within the Ordering Activity's organization, and external users outside of the Ordering Activity's organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Ordering Activity's applications.

"Multi-core Coefficient or Multi-core Scaling Coefficient" The scaling coefficient set forth in the GSA Price List which is applied to License and Support Price to determine the List Price for eligible License Types and Machines.

"Networked License" The limited right for the number of Seats equal to the quantity of such licenses purchased, as specified in the Purchase Order, to directly or indirectly access a Program installed on a licensed Server or Servers in a single network.

"Networked Seat" see "Seat".

"Operating System Software" The operating system software on which the Program is licensed to be Used, as specified on the Purchase Order.

"OT" denotes "other", for products or services included on a Purchase Order, which are not otherwise defined.

"Primary Copy" A licensed copy of the Program provided by SAP Government Support and Services, Inc. or made available by SAP Government Support and Services, Inc. for electronic download, including a copy provided initially as a trial copy.

"Processor" means "Core".

"Program" The object code version of the software product(s) listed in the Purchase Order, as well as any and all Updates and authorized copies. Although the Program media may contain other software products, Ordering Activity is licensed to install and Use only the designated Program.

"Quantity of Licenses" The number of a particular license type, such as (without limitation) Server or Seat, licensed for a particular Program pursuant to a Purchase Order.

"Seat", or "ST" A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant ("PDA"), wireless device or real time device. See "Networked License".

"Secondary Copy" A licensed copy of the Program reproduced by Ordering Activity from the Primary Copy.

"Server" A computer containing software, which permits it to await and fulfill services to other computers.

"Server License" or "SR" The limited right to install a copy of a Program on a Server, for access solely by licensed Seats or licensed Concurrent Users, as applicable.

"Standalone Seat" or "SS" The limited right to install the Program on a single workstation Machine (and not a server Machine) for access solely by the single workstation Machine upon which it resides.

"Standby Concurrent User License" or "SC" The limited right to access and Use a Standby Copy of a Program licensed under a Concurrent User License in the event of an interruption of a production copy of the same Program. See "Concurrent User License".

"Standby Copy" means a copy of a Program pre-installed on a separate Machine for the purpose of processing data duplicated from a production copy of the same Program. The Standby Copy may be accessed and Used in the event of a failure of the production Machine for the duration of such failure.

"Standby CPU License" or "SF" The limited right to access and Use a Standby Copy of a Program licensed under a CPU License in the event of an interruption of a production copy of the same Program.

"Standby Server License" or "SV" The limited right to install a Standby Copy of a Program licensed under a Server License in the event of an interruption in the operation of a production copy of the same Program.

"Storage License" or "TB" The limited right to store data in a Program such that the quantity of DSUs Used is no greater than the number of DSUs licensed, as specified in the Purchase Order. The license fee payable by Ordering Activity shall be determined by multiplying the number of DSUs by the applicable rate, each as specified on the Purchase Order. In the event the number of DSUs in a Program is increased, Ordering Activity shall report such increase, execute a new Purchase Order and pay an additional amount determined by multiplying the incremental storage capacity by the then applicable rate per DSU set forth in the GSA Price List. Storage may only be licensed in whole DSUs, and the number of DSUs shall be rounded up to the next higher whole DSU when determining the number of Storage Licenses required.

"Storage Development and Testing License" or "DB" The limited right to store data in a Program up to the number of DSUs licensed, and to Use such data for development and testing purposes only and not in a parallel production environment. See "DSU" and "Storage License."

"Storage Standby License" or "SB" The limited right to store data in a Standby Copy of a Program up to the number of DSUs licensed, and to Use such data in the event of an interruption of a production copy of the same Program. See "DSU" and "Storage License".

"Support" The technical support plan selected by Ordering Activity.

"Updates" means error corrections, maintenance releases and Major Versions of the Program made available to Ordering Activity under certain Sybase Support plans.

"Upgrade" means (i) transfer of the Program to a Machine of a higher Sybase Machine Class, i.e. transfer to a Machine that provides greater processing capacity, or (ii) Ordering Activity migration from one edition of a Program to another edition with increased functionality, e.g. from Advanced Edition to Enterprise Edition.

"Use" means to install, load, view, print, update, access, utilize, or store the Program.

2. UTILIZATION LIMITATIONS

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation shall be subject to the following:
 - (1) Title to and ownership of the software and documentation shall remain with the SAP, unless otherwise specified. SAP reserves all rights in and title to the Software and Documentation not expressly granted to an Ordering Activity;
 - (2) Software licenses are by site, by ordering activity and as specified in the applicable order.
 - (3) The ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of SAP. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, SAP standard commercial guarantee/warranty as stated herein will apply to this contract.
 - (1) **GUARANTEE.** The term of the warranty is one year for software and 90 days for Maintenance. All guarantees are from date of shipment.
 - (2) **PROGRAMS.** For the term indicated above, Contractor, through SAP, warrants that the Programs, when properly used, will operate in all material respects in conformity with SAP's published specifications for such version, and the Program media shall be free of defects.
 - (3) **MAINTENANCE.** Contractor, through SAP, warrants that technical support and on-site technical support shall be performed by qualified individuals in accordance with generally accepted industry standards.
 - (4) **DOCUMENTATION.** The Program documentation is provided as is, without any warranty.c
- b. The Contractor and SAP disclaims all other warranties and conditions, express and implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose. No warranty is made regarding the results on any Program or Maintenance or that all errors in the Programs will be corrected or that the Program's functionality will meet the Ordering Activity's requirements.
- c. **REMEDIES.** For any breach of the above warranties, the Ordering Activity's remedy and SAP NS2 entire liability shall be:
 - (1) **PROGRAMS.** The correction of Program errors that cause breach of the warranty, or, if Licensor is unable to make the Program operate as warranted, the Ordering Activity shall be entitled to a refund of the license fees paid for the affected Program.
 - (2) **MAINTENANCE.** The correction or reperformance of the maintenance, or if Licensor is unable to perform the maintenance as warranted, the Ordering Activity shall be entitle to recover the fees paid to Licensor for the unsatisfactory maintenance.
- d. **WARRANTY EXCLUSION AND LIMITATION OF DAMAGES.** Except as expressly set forth herein, there are no warranties expressed or implied in no event will Licensor be liable to the Ordering Activity for consequential damages as defined in the Uniform Commercial Code, Section 2-715 in effect in the District of Columbia as of January 1, 1973, i.e.: Consequential damages resulting from Licensor's breach include (a) any loss resulting from general or particular requirements and needs of which Contractor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty.

4. TECHNICAL SERVICES

Provided the ordering activity has entered into a valid maintenance agreement, the Contractor, through SAP NS2NS2, without additional charge to the ordering activity, shall provide a hot line technical support number 1-800-8SYBASE for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 7:00AM to 5:30PM Eastern time.

5. MAINTENANCE OF GENERAL PURPOSE INFORMATION TECHNOLOGY SOFTWARE (Maintenance as a Product CLIN 132-32 or 132-33)

- a. **ELIGIBILITY REQUIREMENTS:** The following two support requirements will apply:
 - (1) The ordering activity must purchase the same support level for all SAP products licensed on a given CPU.
 - (2) The ordering activity must purchase the same support level for all their CPUs at a given site. The ordering activity may choose to reinstate support for a license which has not been supported for some period of time. The charge to the ordering activity for reinstatement of maintenance support will be based on maintenance charges that would have been incurred from date of cancellation to date of reinstatement.
- b. The Contractor through SAP shall provide first year maintenance support in accordance with the terms and conditions for the SAP Secure Enterprise Support as describe herein below. The support fees shall be calculated at 22% of the Net License Fees for the software supported under the SAP Secure Enterprise Support Plan.
- c. Maintenance may be renewed directly with SAP for one-year options on the anniversary of each project (CBS) as long as SAP NS2 offers support for the products.
- d. Effective January 1, 2013, support renewal for pervious "Sybase" customers will be migrated at the time of their annual renewal to the SAP Secure Enterprise Plan in accord with SAP's current practices.

SAP NS2 Secure Enterprise Support

1. Definitions:

- 1.1 "Go-Live" marks the point in time from when, after implementation of Enterprise Support Solution or an upgrade of Enterprise Support Solution, the Enterprise Support Solution can be used by Ordering Activity for processing real data in live operation mode and for running Ordering Activity's business in accordance with the Agreement.
- 1.2 "Ordering Activity Solution" shall mean Enterprise Support Solutions and any other software licensed by Ordering Activity from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.
- 1.3 "Production System" shall mean a live SAP system used for running Ordering Activity's internal business operations and where Ordering Activity's data is recorded.
- 1.4 "SAP NS2 Enterprise Support" shall mean the global support program delivered commercially by SAP as further defined herein.
- 1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Ordering Activity Solutions and focusing on a specific functional aspect of Ordering Activity's business.
- 1.6 "Secure Enterprise Support" shall mean the support program delivered under this Addendum comprising SAP Enterprise Support and Secure Support as further defined herein.
- 1.7 "Secure Support" shall mean the secure support delivered commercially by SAP NS2 as further defined herein, delivered in conjunction with SAP Enterprise Support.
- 1.8 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information on an incident by interview or by analysis in a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.
- 1.9 "Top-Issue" shall mean issues and/or failures identified and prioritized jointly by SAP and Ordering Activity in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on Ordering Activity's core Production System.
- 1.10 "SAP Software" shall mean the "Sybase" or "SAP" software, previously licensed by the Ordering Activity, under separate Agreement, to be supported under this SAP Secure Enterprise Support Plan.

2. Scope:

SAP NS2 ENTERPRISE SUPPORT. Ordering Activity may request and Contractor, through SAP NS2, shall provide through this Attachment A, to such degree as SAP makes such services generally available within the Geographic Scope of the GSA Schedule Contract, SAP Enterprise Support services. SAP Enterprise Support is delivered by Contractor through SAP and currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- During mainstream maintenance for an SAP release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Software change management, such as changed configuration settings or Enterprise Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Ordering Activity with up to five days remote support services per calendar year from SAP solution architects
 - to assist Ordering Activity in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Ordering Activity's business process requirements.
 - to give Ordering Activity guidance in form of knowledge transfer sessions, weighted one day, for defined SAP software/applications or Global Support Backbone components. Currently, content and session schedules are stated at <http://service.sap.com/enterprisesupport>. Scheduling, availability and delivery methodology is at SAP's discretion.

- SAP gives Ordering Activity access to guided self-services as part of SAP Solution Manager Enterprise Edition, helping the Ordering Activity to optimize technical solution management of selected Enterprise Support Solutions.
- Configuration guidelines and content for Enterprise Support Solutions are usually shipped via SAP Solution Manager Enterprise Edition. Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as integral parts of Enterprise Support Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Enterprise Support Solutions and/or the applicable Documentation for the Enterprise Support Solutions.

Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Ordering Activity custom code and enhancement packages and other Enterprise Support Solutions updates. Each check is conducted for one specific modification in one of Ordering Activity's core business process steps. Ordering Activity is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- **Modification Justification:** Based on Ordering Activity's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Enterprise Support Solutions which may fulfill the Ordering Activity's requirements (for details see <http://service.sap.com/>).
- **Custom Code Maintainability:** Based on Ordering Activity's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to Ordering Activities and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that Ordering Activities can implement into their SAP system. SAP Notes also document related issues, Ordering Activity questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- SAP Solution Manager Enterprise Edition – as described in Section 2.4

Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions, including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global 24x7 root cause analysis and escalation procedures in accordance with section 2.1 below.
- **Root Cause Analysis for Custom Code:** For Ordering Activity custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3, applicable for priority "very high" and priority "high" messages. If the Ordering Activity custom code is documented according to SAP's then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Ordering Activity in issue resolution

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Ordering Activity's testing activities with functionalities that currently include:
 - Test administration for Enterprise Support Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition

- Quality Management for management of "Quality-Gates"
- SAP-provided tools for automatic testing
- SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Ordering Activity with the optimization of the end-to-end operations of Ordering Activity's SAP Software Solution.
 - Run SAP Methodology: Assists Ordering Activity with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution. For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1 Global Message Handling and Service Level Agreement (SLA). When Ordering Activity reports malfunctions, SAP supports Ordering Activity by providing information on how to remedy, avoid and bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Ordering Activity may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. For further details on definitions of message priorities see SAP Note 67739 which will be provided upon written request.

In exceptional cases, Ordering Activity may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that License provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements ("SLA" or "SLAs") shall apply to all Ordering Activity support messages that SAP accepts as being Priority 1 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of Purchase Order. As used herein, "Calendar Quarter" is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

2.1.1 SLA for Initial Response Times: Priority 1 Support Messages ("Very High"). SAP shall respond to Priority 1 support messages within one (1) hour of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages: SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Ordering Activity's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message ("SLA for Corrective Action"). In the event an action plan is submitted to Ordering Activity as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Ordering Activity actions to support the resolution process; (iv) to the extent possible, planned dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP ("Processing Time"). Processing Time does not include the time when the message is on status "Customer Action" or "SAP Proposed Solution", whereas (a) the status Customer Action means the support message was handed over to Ordering Activity; and (b) the status SAP Proposed Solution means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Ordering Activity agrees to reduce the priority level of the message.

2.1.3 Prerequisites and Exclusions.

2.1.3.1 Prerequisites. The SLAs shall only apply when the following prerequisites are met for all support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of

Enterprise Support Solutions which are classified by SAP with the shipment status “unrestricted shipment”; (ii) support messages are submitted by Ordering Activity in English via the SAP Solution Manager Enterprise Edition in accordance with SAP’s then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018 which will be provided upon written request) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance.

For Priority 1 support messages, the following additional prerequisites must be fulfilled by Ordering Activity: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Ordering Activity makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Ordering Activity’s obligations hereunder; and (c) a Ordering Activity contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

2.1.3.2 Exclusions. For SAP Enterprise Support in particular the following types of Priority 1 messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Ordering Activity (including without limitation those developed by SAP Custom Development and/or by SAP subsidiaries) except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications is expressly excluded even if these country versions were created by SAP or an affiliate of SAP; (iii) the root cause behind the support message is not a malfunction, but a missing functionality (“development request”) or the support message is ascribed to a consulting request; and (iv) support messages referred for handling under Secure Support.

2.1.4 Service Level Credit.

2.1.4.1 Contractor, through SAP, shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Ordering Activity submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any Calendar Quarter during the Enterprise Support term, Ordering Activity agrees that SAP shall be deemed to have met the its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

2.1.4.2 Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLAs are not met (each a “Failure”), the following rules and procedures shall apply: (i) Ordering Activity shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Ordering Activity’s claim; (iii) Ordering Activity shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP’s ability to reach the SLAs; (iv) subject to this Section 2.1.4, if based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit (“SLC”) to Ordering Activity’s next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Ordering Activity’s SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Ordering Activity’s SAP Enterprise Support Fee for such Calendar Quarter. Ordering Activity bears the responsibility of notifying SAP of any SLCs within one month after the end of a Calendar Quarter in which a Failure occurs. No penalties will be paid unless notice of Ordering Activity’s well-founded claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Ordering Activity’s sole and exclusive remedy with respect to any alleged or actual Failure.

2.2 SAP Support Advisory Center. For Priority 1 and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP’s support organization for mission critical support related requests (the “Support Advisory Center”). The Support Advisory Center will perform the following mission critical support tasks: (i) remote support for Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24X7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Ordering Activity’s IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Ordering Activity; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.

As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Ordering Activity’s Contact Person and SAP NS2 shall jointly perform one mandatory setup service (“Initial Assessment”) for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Ordering Activity’s Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for mission critical support related requests. The available local or global dial-in numbers are shown in SAP Note 560499 which will be provided upon written request.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

2.3 SAP Continuous Quality Check. In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the “Continuous Quality Check” or “CQC”) per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Ordering Activity and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Ordering Activity, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Ordering Activity with an action plan and/or written recommendations.

Ordering Activity acknowledges that all or part of the CQC sessions may be delivered by SAP NS2 and/or a certified SAP NS2 partner acting as SAP NS2's subcontractor and based on SAP's CQC standards and methodologies. Ordering Activity agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder.

Ordering Activity acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Ordering Activity fails to follow these guidelines, SAP NS2 is not obliged to deliver the yearly CQC to the Ordering Activity.

2.4 SAP Solution Manager Enterprise Edition under SAP Enterprise Support.

2.4.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Agreement and is solely for the following purposes under SAP Enterprise Support: (i) delivery of SAP Enterprise Support and support services for Ordering Activity Solutions including delivery and installation of software and technology maintenance for Enterprise Support Solutions; and (ii) application lifecycle management for Ordering Activity Solutions and for any other software components and IT assets licensed or otherwise obtained by Ordering Activity from third parties provided such third party software, software components and IT assets are operated in conjunction with Enterprise Support Solutions and are required to complete the Ordering Activity's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Ordering Activity as part of the Enterprise Support Solutions.
- For application lifecycle management as outlined under section 2.4.1(ii) above, Ordering Activity does not require a separate Package license to SAP CRM. Ordering Activity must hold appropriate Named User licenses to Use SAP Solution Manager.

2.4.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Ordering Activity shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.4.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Ordering Activity Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.4.3 SAP, in its sole discretion, may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.4.

2.4.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Addendum and by Named Users licensed by Ordering Activity subject to the licensed rights for the Software and exclusively for Ordering Activity's SAP-related support purposes in support of Ordering Activity's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Enterprise Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Ordering Activity shall be entitled to allow any of its employees to use web self-service in the SAP Solution Manager Enterprise Edition during the term of this Addendum for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Ordering Activity Solutions and Additional Supported Assets.

2.4.5 Use of SAP Solution Manager Enterprise Edition may not be offered by Ordering Activity as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Agreement may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Ordering Activity's internal business operations under and in accordance with the terms of this Addendum.

SAP NS2 SECURE SUPPORT. Ordering Activity may request and SAP NS2 shall provide, to such degree as SAP NS2 makes such services generally available within the Geographic Scope of the SAP NS2 GSA Schedule, Secure Support services. Secure Support is delivered in the United States only and currently includes a secure remote connection, secure backoffice, secure support advisor, secure support setup, and certain secure continuous quality checks as specified herein.

2.5 SAP NS2 Secure Remote Connection and Secure Backoffice. A US citizen-staffed secure backoffice located in a US facility shall be provided during the standard hours of 9:00AM to 6:00PM United States Eastern time, Monday through Friday, excluding holidays observed by SAP NS2 ("Standard Hours") for the following Ordering Activity site(s).

The Ordering Activity shall define the location in the Delivery Order where Secure Support is to be delivered.

Under SAP Enterprise Support, Ordering Activity messages are initially received and addressed by SAP's global support organization. When connection is needed to the Ordering Activity network in cases where login is required for problem resolution, Ordering Activity requires that login can only be performed by US citizen resources over an approved communication channel that terminates in the continental US. Under Secure Support, SAP NS2 provides this secure channel and maintains a controlled area from which the secure connection will terminate in a NS2-provided, or if agreed a Ordering Activity-provided, personal computer ("PC"). This PC shall contain and be prepared to run the agreed upon and Ordering Activity-provided Client VPN software, which will enable the SAP NS2 secure connection to the Ordering Activity solution infrastructure for the provision of Secure Support. Ordering Activity shall provide all required customer-specific hardware/software, remote secure connections and access permissions to its production systems for delivery of the Secure Support service by SAP NS2.

The following operational process applies for SAP NS2 Back office message support:

1. Ordering Activity is responsible for identification of issues, initial issue analysis performed by Ordering Activity's support center, and opening of customer message tickets through SAP Service Marketplace or SAP Solution Manager under SAP Enterprise Support.
2. Under SAP Enterprise Support, SAP Global Support Centers provide the first level of SAP support to review, analyze and provide any known resolution to issues or provide global 24x7 root cause analysis and escalation procedures. SAP Global Development will be engaged as appropriate to determine a resolution or identify additional information needed from Ordering Activity.
3. Under Secure Support, neither SAP Global Support Centers nor SAP Global Development is authorized to access Ordering Activity's system directly and will be instructed in internal SAP procedures not to request such access. In the event access is required by SAP, the SAP NS2 Secure Backoffice will be engaged through internal SAP procedures to continue issue resolution as authorized by Ordering Activity and facilitate communication between Ordering Activity and SAP Global resources.
4. Under Secure Support, resolutions to issues will be documented and made available to Ordering Activity in accordance with SAP's standard procedures.

2.6 SAP NS2 Secure Support Advisor. SAP NS2 shall designate one (1) resource in the SAP NS2 organization to be Ordering Activity's Secure Support contact person (the "Secure Support Advisor"). The SAP NS2 Secure Support Advisor shall perform the following support tasks: (i) assist Ordering Activity in planning, coordinating, scheduling and delivering (in cooperation with Ordering Activity) the Secure Support Setup and Secure Continuous Quality Checks described below; (ii) advising Ordering Activity on the implementation of recommended actions resulting from delivery of SAP NS2 Secure Support services; (iii) acting as an additional escalation contact for exception handling in the SAP Enterprise Support process; (v) providing guidance in cases in which Secure Continuous Quality Checks, an action plan, and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solution, and (vi) providing access for remote certification of the SAP Customer Center of Expertise if requested by Ordering Activity.

The SAP NS2 Secure Support Advisor is available via telephone and email during the Standard Hours specified above. SAP NS2 shall make available a substitute SAP NS2 Secure Support Advisor during any periods where the designated SAP NS2 Support Advisor is unavailable. All Services of the designated SAP NS2 Support Advisor shall be coordinated with Ordering Activity's designated SAP NS2 Secure Support Program Manager, as described in Section 3.1 below.

2.7 SAP NS2 Secure Support Setup. Ordering Activity and SAP NS2 agree to jointly conduct an initial Secure Support Setup as part of Secure Support. The Secure Support Setup includes: (i) securing remote connectivity between Ordering Activity and SAP NS2; (ii) reviewing best practices for collaboration with SAP NS2 and SAP Active Global Support; (iii) reviewing Ordering Activity solution landscape; and (iv) review of Ordering Activity project roadmap.

2.8 SAP NS2 Secure Continuous Quality Checks. Certain Secure Continuous Quality Checks shall be delivered through the secure remote connection established under SAP NS2 Secure Support. Ordering Activity shall coordinate such SAP NS2 Secure Continuous Quality Checks with the Secure Support Advisor. In case of critical situations related to the SAP Software Solution (such as, implementation, upgrade, migration or Top Issues), SAP NS2 will provide at least one Secure Continuous Quality Check (the "SAP NS2 Secure Continuous Quality Check" or "Secure CQC") per year for each SAP Software Solution. The Secure CQC portfolio of services for Ordering Activities includes:

- SAP GoingLive™ Check for an implementation project going productive.
- SAP GoingLive™ Functional Upgrade Check for an upgrade to a higher release.

The CQC portfolio of services may be changed by SAP NS2 from time to time. The CQC may consist of one or more manual or automatic remote Service Sessions. SAP NS2 may deliver further Secure CQC's in cases where vital alerts reported by SAP EarlyWatch Alert or in those cases where Ordering Activity and the SAP NS2 Secure Support Advisor mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact priorities of a Secure CQC, shall be mutually agreed upon between the parties. At the end of a Secure CQC, SAP NS2 will provide Ordering Activity with an action plan and/or written recommendations. Ordering Activity agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of Secure CQC's hereunder.

In the event the Effective Date of the Period of Performance is after September 30th of the year in which the Effective Date occurs, Ordering Activity shall not be entitled to receive the above mentioned Secure CQC services for the remainder of such calendar year.

Ordering Activity understands and agrees that to the extent the SAP Software contains products and/or software components licensed or resold by SAP from a third party, the support of such third party is required to deliver a CQC.

Ordering Activity acknowledges that SAP NS2 limits Secure CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 20 working days before the planned delivery date.

2.9 Ordering Activity-Specific Security Requirements and Instructions. The parties acknowledge that neither the SAP Enterprise Support nor Secure Support described herein contemplates the processing or storage of Ordering Activity data, Ordering Activity Proprietary Information, or Ordering Activity customer information by SAP and SAP NS2, and that Ordering Activity provides access to such information or data, if at all, solely to the extent necessary for SAP and SAP NS2 to perform its obligations under this Addendum. Notwithstanding anything to the contrary herein, with respect to the SAP Enterprise Support and SAP NS2 Secure Support delivered hereunder, Ordering Activity may, in its sole discretion, and at any time, elect not to allow, or to otherwise limit: (a) remote access by SAP and SAP NS2, and/or (b) connectivity by and between Ordering Activity and SAP and SAP NS2. Ordering Activity acknowledges that Ordering Activity's failure to establish remote access or connection as described in Section 3.2 below, or to limit such access, may lead to delays in message handling and the provision of corrections, or may render SAP and SAP NS2 unable to provide the full scope of SAP Enterprise Support and Secure Support. Ordering Activity shall not be entitled to any refund or credit of Secure Enterprise Support Fees paid, and SAP and SAP NS2 shall not be held liable for any delay or inability to meet the support obligations set forth in this Addendum to the extent such delay or inability results from Ordering Activity's limitation of access. Accordingly, this Section 2.9 describes the Ordering Activity-specific security requirements that are mutually agreed to be applicable to this Addendum.

2.9.1 Security Requirements Applicable to SAP Enterprise Support.

SAP provides information regarding its commercial security practices related to the global delivery of SAP Enterprise Support, including the technical and organizational measures implemented by SAP designed to ensure the lawful processing of personal data in accordance with EU data protection laws and any audits and certifications. Upon Ordering Activity's written request, SAP shall provide its information document, "Security and Data Protection@SAP," for Ordering Activity's review and information purposes. SAP agrees to comply with the "Security and Data Protection@SAP" information document. SAP represents that, to the best of its knowledge, it engages in best practices with respect to the hiring of its employees, in compliance with applicable local law and regulations, including administering background checks in certain locations, including such background checks as are consistent with best practices of SAP in the relevant location and consistent with applicable law.

2.9.2 Security Requirements Applicable to Secure Support.

2.9.2.1 Clearances and Representations. SAP NS2NS2 represents that: (i) it is a subsidiary company of SAP AG and operates under a Proxy Agreement administered by the US Defense Security Service to mitigate foreign ownership, control, and influence; (ii) it has successfully completed security inspection process requirements of, and currently holds a Top Secret facility security clearance granted by, the US Department of Defense (DoD); and (iii) the SAP NS2 employees assigned with responsibility for delivering Secure Support to Ordering Activity hereunder are U.S. citizens and some individuals have successfully completed the security clearance process requirements of, and currently hold Secret or Top Secret security clearances. During the term of this Addendum upon Ordering Activity's written request the SAP NS2 Facility Security Officer (FSO) shall verify such clearance(s) in writing to Ordering Activity and promptly notify Ordering Activity of any downgrade in status.

2.9.2.2 System Access Instructions. SAP NS2 shall comply with Ordering Activity's requirements stated below for access to Ordering Activity's systems:

- a. Ordering Activity prohibits remote access by, and disclosure of any data to SAP under SAP Enterprise Support
- b. SAP NS2 shall treat any Ordering Activity data, user access, passwords or system information provided by Ordering Activity to SAP NS2 as Proprietary Information under applicable provisions of the Agreement.
- c. Ordering Activity shall control, and shall grant or limit secure remote access to SAP NS2 at its sole discretion, and SAP NS2 shall only access those systems that Ordering Activity authorizes SAP NS2 to access.

- d. In the event Ordering Activity discloses classified, controlled unclassified, or sensitive Ordering Activity data to SAP NS2 as part of any authorized remote access, SAP NS2 shall disclose such data only in accordance with the instructions provided by Ordering Activity pursuant to Section 3.2 (xv) below.
- e. If access is granted by Ordering Activity pursuant to Section 2.9.2.2 (c) above, Ordering Activity shall provide SAP NS2 personnel with any user authorizations and passwords to access its systems and may revoke or terminate such authorizations as Ordering Activity deems appropriate from time to time. Ordering Activity shall grant SAP NS2 access to Ordering Activity systems or personal information only if such access is essential for the performance of the support hereunder, and SAP NS2 shall comply with Ordering Activity's instructions for such access.
- f. If onsite support is provided, Ordering Activity requires that personnel delivering support onsite at Ordering Activity facilities be approved by Ordering Activity and adhere to Ordering Activity's reasonable requirements and rules for access, and for use of Ordering Activity's electronic resources. Ordering Activity has the right to request removal or replacement of personnel at its sole discretion. Ordering Activity understands and agrees that schedules, resource availability, and costs are impacted by delays in processing approvals for such access.
- g. Export Controls for Data. Ordering Activity may disclose to SAP NS2 as part of any authorized remote access, data which may be subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Provided Ordering Activity identifies the data as being subject to such controls, SAP NS2 shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder in handling any such data.

3. Ordering Activity's Responsibilities.

3.1 Ordering Activity Program Management. In order to receive SAP NS2 Secure Enterprise Support hereunder, Ordering Activity shall designate a qualified English speaking SAP NS2 Secure Enterprise Support Program Manager within its SAP NS2 Customer Center of Expertise and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. The SAP NS2 Secure Enterprise Support Program Manager shall cooperate with the designated SAP NS2 Secure Support Advisor to administer the terms of this support agreement, and shall be Ordering Activity's authorized representative empowered to make necessary decisions for Ordering Activity or bring about such decision without undue delay.

Contact Person Name	Postal Address	Email Address	Desk Telephone Number	Mobile Telephone Number

3.2 Other Requirements. In order to receive SAP NS2 Secure Enterprise Support hereunder, Ordering Activity must:

- (i) Continue to pay all maintenance and support fees in accordance with the Support Plan and the GSA Schedule Contract.
- (ii) Otherwise fulfill its obligations under the Support Plan and the GSA Schedule Contract.
- (iii) For the SAP NS2 Enterprise Support global component of SAP NS2 Secure Enterprise Support, provide and maintain remote access (subject to Section 2.9.1 above) via a technical standard procedure as defined by SAP and grant SAP NS2 all necessary authorizations, in particular for global problem analysis as part of global message handling. Such global remote access, otherwise agreed to in writing by the Parties, shall be granted without restriction regarding the nationality of the SAP or SAP NS2 employee(s) who process support messages or the country in which they are located. Ordering Activity acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP or SAP NS2 unable to provide help in an efficient manner. Ordering Activity understands that message tickets opened by Ordering Activity through SAP Service Marketplace or SAP Solution Manager are initially processed through SAP Global Support Centers worldwide before routing for secure handling by SAP NS2. It is Ordering Activity's responsibility to ensure that no sensitive information is transmitted when opening message tickets. The necessary software components must also be installed for support services. For more details, see SAP Note 91488, which shall be provided upon written request.
- (iv) For the Secure Support component of SAP NS2 Secure Enterprise Support, provide and maintain a secure remote connection (subject to Section 2.9.2 above) between the SAP NS2 secure facility and Ordering Activity's production systems via a technical standard procedure acceptable to SAP NS2; provide all required Ordering Activity-specific hardware/software, if any, agreed for use by SAP NS2, and grant SAP NS2 all necessary authorizations and permissions necessary for SAP NS2 Secure Support delivery. Ordering Activity acknowledges that SAP NS2 is not able to fulfill its SAP NS2 Secure Support obligations during periods of time when Ordering Activity denies SAP NS2 access to the Enterprise Support Solutions. In the event Ordering Activity discloses Ordering Activity data to SAP NS2 as part of authorized secure remote access, and such data is rated classified, controlled unclassified, or sensitive as defined by the US National Industrial Security Program (NISPO), or is subject to US export control laws including ITAR and EAR, Ordering Activity shall identify and provide its instructions to SAP NS2 for the handling of such data, including its instructions for allowing access to such data by SAP NS2.

- (v) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 5 below.
- (vi) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vii) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Ordering Activity's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308, which shall be provided upon written request, for information on setting up this service.
- (viii) Perform the Initial Assessment as described in Section 2.2 and implement all recommendations of SAP classified as mandatory.
- (ix) Establish a global connection between Ordering Activity's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Enterprise Support Solutions and Ordering Activity's SAP Solution Manager Enterprise Edition installation. Ordering Activity shall maintain the solution landscape and core business processes in Ordering Activity's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Ordering Activity shall document any implementation or upgrade projects in Ordering Activity's SAP Solution Manager Enterprise Edition system.
- (x) To fully enable and activate the SAP Solution Manager Enterprise Edition, Ordering Activity shall adhere to the applicable documentation.
- (xi) Ordering Activity agrees to maintain adequate and current records of all Modifications and, if needed, promptly provide such records to SAP NS2.
- (xii) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xiii) Inform SAP NS2 without undue delay of any changes to Ordering Activity's installations and Named Users and all other information relevant to the Enterprise Support Solutions.
- (xiv) Provide, configure and maintain any Ordering Activity-provided hardware/software and any Ordering Activity-provided authorizations/permissions for SAP NS2 personnel to provide Secure Support delivery without the need for SAP NS2 personnel to travel to Ordering Activity or other non-SAP NS2 locations.
- (xv) Identify and mark any classified, controlled unclassified, or sensitive Ordering Activity data that may be disclosed to SAP NS2 in connection with the delivery of Secure Support and identify the safeguards Ordering Activity requires from SAP NS2 to protect such data and any procedures/limitations for allowing access to such data by SAP NS2.
- (xvi) Ordering Activity acknowledges that any additional background investigations or security clearances required by Ordering Activity may limit the SAP NS2 staff available to provide the delivery of SAP NS2 Secure Support.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise. In order to leverage the full potential value delivered as part of SAP NS2 Enterprise Support, Ordering Activity is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Ordering Activity as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Ordering Activity's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE. The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Ordering Activity support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from the Ordering Activity and/or any of its affiliates provided such affiliates are entitled to use the SAP NS2 Enterprise Support Solutions under the Agreement. In this role the Customer COE shall also be empowered to function as an interface to SAP NS2 to take all action and decisions needed to avoid unnecessary modification of Enterprise Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy.

- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Enterprise Support Solutions and the Customer COE within the Ordering Activity's organization.
- CQC and other remote services planning: Ordering Activity regularly engages in a service planning process with SAP NS2. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. Ordering Activity must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Ordering Activity has started using at least one of the Enterprise Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. SAP NS2 Secure Enterprise Support Fees.

SAP NS2 Secure Enterprise Support Service at the site(s) specified above shall commence as of the first day of the month following initial delivery of the Software under Appendices to the Agreement, and shall be paid annually in advance. Upon issuance of an Order by the Ordering Activity, after the Initial Term (as defined in the applicable Appendix, or order documents under the Agreement), and subject to the Agreement and this Secure Enterprise Support Addendum, Secure Enterprise Support Service shall renew at the beginning of each calendar year for the subsequent one year period.

The annual Secure Enterprise Support Fee for the Software licensed under Appendices to the Agreement is priced at the then current SAP NS2 Secure Enterprise Support Factor in effect (currently 22%) multiplied by the net total amount of the Net License Fee for the licensed Software as specified in Appendices to the Agreement. SAP agrees that the Secure Enterprise Support Factor shall remain at 22% until December 31, 2016. Thereafter, the Secure Enterprise Support Factor is subject to change once during a calendar year upon ninety (90) days' notice to Ordering Activity. Secure Enterprise Support Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net 30 days from date of invoice. Any Secure Enterprise Support Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect. Upon issuance of a modification to these terms, SAP Secure Enterprise Support offered by SAP NS2 may be changed annually by SAP NS2 at any time upon ninety (90) days prior written notice to Ordering Activity. After the Initial Term, the Secure Enterprise Support Fees and any limitations on increases are subject to Ordering Activity's compliance with the Customer COE requirements specified in Section 5 above.

6. **Delivery.** Delivery of the Secure Enterprise Support hereunder will be made by making the support available for download or other electronic transmission to Ordering Activity specified on a delivery order. Ordering Activity agrees not to request any physical delivery of SAP NS2 Secure Enterprise Support and should it errantly occur that any such delivery will be rejected by the Ordering Activity. Ordering Activity agrees that if Secure Enterprise Support becomes temporarily unavailable electronically, such support deliverable is extended until electronic delivery is available or until Contractor and Ordering Activity contractually agree on another form of delivery.

7. Termination.

7.1 Unless otherwise agreed in an Order or by modification to such Order, Secure Enterprise Support may be terminated by either party with three (3) months written notice (i) prior to the end of the Initial Term and (ii) thereafter, prior to the start of the following renewal period. Any termination provided in accordance with above will be effective at the end of the then-current Secure Enterprise Support period during which the termination notice is received by the respective party. Notwithstanding the foregoing, Contractor may terminate SAP NS2 Secure Enterprise Support after one (1) month written notice of Ordering Activity's failure to pay NS2 Secure Enterprise Support Fees. Notwithstanding the foregoing, any such Termination as defined above shall be in accordance with the terms and conditions of the GSA Schedule Contract.

7.2 For the avoidance of any doubt, termination of SAP NS2 Secure Enterprise Support or selection to enroll in another type of SAP NS2 Support Services by Ordering Activity pursuant to SAP NS2 Support Services selection provisions under this Support Plan Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of SAP NS2 Secure Enterprise Support or partial selection of SAP NS2 Secure Enterprise Support by Ordering Activity shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents or this Addendum.

8. **Verification.** To check the compliance with the terms of this Support Plan Agreement, Contractor with the assistance of SAP NS2 shall be entitled to periodically monitor (at least once annually and in accordance with SAP standard procedures) (i) the correctness of the information Ordering Activity provided and (ii) Ordering Activity's usage of the Solution Manager Enterprise Edition in accordance with the rights and restrictions set out in Section 2.4.
9. **Reinstatement.** In the event Ordering Activity elects not to commence SAP NS2 Secure Enterprise Support upon the first day of the month following initial delivery of the Software, or SAP NS2 Secure Enterprise Support is otherwise terminated pursuant to Section 7 above or declined by Ordering Activity for some period of time, and is subsequently requested or reinstated, SAP NS2 will invoice Ordering Activity the accrued SAP NS2 Secure Enterprise Support Fees associated with such time period and, if applicable, a reinstatement process fee in accord with SAP NS2's then current practices.

10. Other Terms and Conditions.

1.1 The scope of SAP NS2 Secure Enterprise support offered by Contractor, through SAP NS2 may be changed annually by Contractor at any time upon three months prior written notice and written modification to these terms and conditions.

1.2 Ordering Activity hereby confirms that Ordering Activity has obtained all licenses for the Ordering Activity Solutions.

1.3 In the event that Ordering Activity is entitled to receive one or more services per calendar year, (i) Ordering Activity shall not be entitled to receive such services in the first calendar year if the Effective Date of Period of Performance is after September 30 and (ii) Ordering Activity shall not be entitled to transfer a service to the next year if Ordering Activity has not utilized such service.

1.4 FAILURE TO UTILIZE SECURE ENTERPRISE SUPPORT PROVIDED BY SAP NS2 MAY PREVENT SAP NS2 FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP NS2 CANNOT BE HELD RESPONSIBLE.

1.5 In the event SAP licenses third party software to Ordering Activity under the Agreement, SAP NS2 shall provide Secure Enterprise Support on such third party software to the degree the applicable third party makes such support available to SAP NS2. Ordering Activity may be required to upgrade to more recent versions of its operating systems and databases to receive Secure Enterprise Support for such third party software. If the respective vendor offers an extension of support for its product, SAP NS2 may offer such extension of support under a separate written agreement for an additional fee.

1.6 SAP NS2 Secure Enterprise Support is provided according to the current maintenance phases of SAP Software releases which can be provided in response to a written request.

1.7 SAP NS2 shall provide SAP NS2 Secure Enterprise Support to Ordering Activity under the terms of the GSA Schedule contract and this Attachment A, including, but not limited to, the sections addressing the following issues: limitation of liability, proprietary or confidential information and rights in intellectual property. However, the parties agree that, other than as to damages resulting from the unauthorized use or disclosure of proprietary information, the amount of damages hereunder shall be limited to the fees paid under this Addendum. Such terms shall prevail over any conflicting or inconsistent terms and conditions, and any additional terms shall be deemed void, that may appear on any purchase order or other document furnished by Ordering Activity to SAP NS2.

1.8 Ordering Activity is responsible for making the necessary internal arrangements for the carrying out of the services hereunder, and in the case of on-site services, if any, for providing an appropriate work environment such as office space, parking, network connectivity, and access to appropriate systems, personnel, printers, fax machines, photocopiers, projectors, and other important facilities. Ordering Activity agrees that the services shall be subject to change if the necessary resources are not provided.

1.9 Those provisions of the GSA Schedule contract addressing limitation of liability, proprietary or confidential information and rights in intellectual property shall survive any termination of a Purchase Order, as to the services provided hereunder.

1.10 SAP shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the Secure Enterprise Support services, whether or not developed for Ordering Activity.

ELIGIBILITY REQUIREMENTS: The following two support requirements will apply:

- (1) The ordering activity must purchase the same support level for all SAP products licensed on a given CPU.
- (2) The ordering activity must purchase the same support level for all their CPUs at a given site.

SAP NS2 SECURE PRODUCT SUPPORT FOR LARGE ENTERPRISES SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP NS2, for certain large enterprises as further defined herein ("SAP NS2 Secure Product Support for Large Enterprises" or "SAPNS2 Secure PSLE") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "PSLE Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions:

1.1 "Go-Live" marks the point in time from when, after implementation of Licensee's PSLE Solutions or an upgrade of PSLE Solutions, can be used by Licensee for processing real data in live operation mode and for running Licensee's business in accordance with the Schedule contract.

1.2 "Net License Value" shall mean the undiscounted license fees for PSLE Solutions licensed by Licensee and Licensee Affiliates under the Schedule contract minus all discounts granted but before any migration credit is applied.

1.3 "Licensee Solution(s)" shall mean PSLE Solutions and any other software licensed by Licensee from third parties, provided such third party software is operated in conjunction with PSLE Solutions.

1.4 "Production System(s)" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be provided upon written request.

1.6 "Top-Issues" shall mean issues and/or failures identified and prioritized jointly by SAP NS2 and Licensee in accordance with the SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Licensee's core Production System.

1.7 "SAP NS2 Support Services" shall mean SAP NS2 Secure Product Support for Large Enterprises or SAP NS2 Secure Enterprise Support.

2. Scope of SAP NS2 Secure Product Support for Large Enterprises. Licensee may request and Contractor, through SAP NS2, shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Secure Product Support for Large Enterprises services. SAP NS2 Secure Product Support for Large Enterprises currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed PSLE Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or PSLE Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP NS2 gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping Licensee to optimize technical solution management of selected PSLE Solutions.
- Configuration guidelines and content for PSLE Solutions are usually shipped via SAP Solution Manager Enterprise Edition
- Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as part of PSLE Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the PSLE Solutions and/or the applicable documentation for the PSLE Solutions.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to PSLE Solutions (for more information refer to Section 2.1).
- Global 24x7 escalation procedures.

Access to Services Content

- SAP NS2 shall provide Licensee with access to SAP's remote services methodology. Licensee may use this content to perform proactive support services for the PSLE Solutions.

SAP NS2 Secure Product Support for Large Enterprises Roadmap Planning

- Up to two times per calendar year, Licensee and SAP NS2 will perform a joint telephone conference to exchange information about Licensee's current or planned global projects to implement or upgrade Secure PSLE Solutions, to review Top-Issues and risk mitigation plans and to discuss quality assurance topics with regard to end-to-end operations of and support for Licensee's SAP Software Solutions, and to generally align on collaboration between Licensee and SAP NS2 in the area of support activities and delivery of SAP NS2 Secure Product Support for Large Enterprises services for Licensee's SAP Software Solutions.
- Licensee can contact the local support manager of SAP NS2 to request a scheduling of such telephone conference.
- If mutually agreed between Licensee and SAP NS2, such planning can also take place in the course of an onsite meeting at a mutually agreed location.
- Licensee acknowledges that a successful planning requires the support of Licensee's Customer Center of Expertise.

SAP Solution Manager Enterprise Edition as described in Section 2.2.

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems - to monitor available resources and collect system status information of the PSLE Solutions (e.g. SAP EarlyWatch Alert).

- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - o Test administration for Secure PSLE Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - o Quality Management for management of "Quality-Gates"
 - o SAP-provided tools for automatic testing
 - o SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - o End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - o Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution.
 For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time.

In exceptional cases, Licensee may also contact SAP NS2 by telephone. For such contact (and as otherwise provided) SAP NS2 requires that Licensee provides remote access as specified in Section 3.2(iii).

SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739 which will be provided upon written request) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP NS2 can communicate if SAP NS2 assigns the problem message to an overseas SAP NS2 support center, unless otherwise agreed to in writing by the Parties. Until these conditions are fulfilled, SAP may not be able to start message handling or to continue message handling.

2.2 SAP Solution Manager Enterprise Edition under SAP NS2 Secure Product Support for Large Enterprises

2.2.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP NS2 Secure PSLE: (i) delivery of SAP NS2 Secure PSLE and support services for Licensee Solutions including delivery and installation of software and technology maintenance for PSLE Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with SAP NS2 Secure PSLE Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the PSLE Solutions.

For application lifecycle management as outlined under section 2.2.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.2.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.2.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.2.3 SAP may update from time to time on the SAP Service Marketplace the use cases for SAP Solution Manager Enterprise Edition under this Section 2.2.

2.2.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP NS2 Secure PSLE other than those listed above is subject to a separate written agreement, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self-service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.2.5 In the event Licensee terminates SAP NS2 Secure PSLE, Licensee's use of SAP Solution Manager Enterprise Edition under SAP NS2 Secure PSLE shall cease.

2.2.6 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP NS2 Secure Product Support for Large Enterprises Program Management. In order to receive SAP NS2 Secure Product Support for Large Enterprises hereunder, Licensee shall designate a qualified English speaking contact within its SAP NS2 Customer Center of Expertise (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP NS2 Secure Product Support for Large Enterprises hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all SAP NS2 Secure Product Support for Large Enterprise Service Fees in accordance with the Schedule contract terms.
- (ii) Otherwise fulfill its obligations under the Schedule contract.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP NS2 and grant SAP NS2 all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP NS2 employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP NS2 unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488 which will be provided upon written request.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 which will be provided upon written request for information on setting up this service.
- (vii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP NS2 and a connection between the PSLE Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (viii) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (ix) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (x) Submit all error messages via the then current SAP NS2 support infrastructure as made available by SAP NS2 from time to time via updates, upgrades or add-ons.
- (xi) Inform SAP NS2 without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the SAP NS2 Secure PSLE Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise In order to leverage the full potential value delivered as part of SAP NS2 Secure Product Support for Large Enterprises, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP NS2 support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP NS2 recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE: The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the SAP NS2 Secure PSLE Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of SAP NS2 Secure PSLE Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about PSLE Solutions and the Customer COE within Licensee's organization.
- Service Planning: Licensee regularly engages in a service planning process with SAP NS2. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the PSLE Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure that covers the basic functions (primary certification). Licensee has the option to pursue advanced certification of their Customer COE. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. Revenue Thresholds.

5.1 Licensee shall be only eligible to receive SAP NS2 Secure Product Support for Large Enterprises from the date at which Licensee informs SAP NS2 in writing about the meeting of both of the following criteria: (i) the aggregate of the overall yearly expenditure of Licensee, including and all Licensee Affiliates, exceeds or is equal to USD 7,000,000. (seven million dollars) (the "Maintenance Threshold") for: a) SAP Secure Enterprise Support, (b) SAP Secure Product Support for Large Enterprises (c) Maintenance for software licensed from Business Objects; and (e) MaxAttention; and (ii) the Net License Value exceeds or is equal to USD 40,000,000 (forty million dollars) (the "License Threshold").

5.2 Renewal of SAP NS2 Secure Product Support for Large Enterprises is subject to the Revenue Thresholds set forth in Section 5.1.

5.3 Licensee shall not receive any refund, including, but not limited to, previously paid maintenance fees.

6. Fees for SAP NS2 Secure Product Support for Large Enterprises. SAP NS2 Secure Product Support for Large Enterprises Fees shall be paid annually in advance.

7. Other Terms and Conditions.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

7.3 FAILURE TO UTILIZE SAP NS2 SECURE PRODUCT SUPPORT FOR LARGE ENTERPRISES PROVIDED BY CONTRACTOR THROUGH SAP NS2 MAY PREVENT SAPNS2 FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH CONTRACTOR AND SAP NS2 CANNOT BE HELD RESPONSIBLE.

7.4 In the event SAP NS2 through Contractor licenses third party software to Licensee under the Schedule contract, SAPNS2 through Contractor shall provide SAP NS2 Secure Product Support for Large Enterprises on such third party software to the degree the applicable third party makes such support available to SAP NS2. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP NS2 Secure Product Support for Large Enterprises. If the respective vendor offers an extension of support for its product, Contractor through SAP NS2 may offer such extension of support under a separate written agreement for an additional fee.

7.5 SAP NS2 Secure PSLE is provided according to the current maintenance phases of SAP software releases as stated in SAP's website for which a secure link will be provided upon issuance of an order.

SAP Public Services, Inc.
3999 West Chester Pike
Newtown Square, PA 19073

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

1. **Scope.** This Rider and the attached **SAP Public Services, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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

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

SAP PUBLIC SERVICES, INC.

SAP PUBLIC SERVICES, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS.

1.1 "Add-on" means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.

1.2 Reserved.

1.3 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided hereunder.

1.4 Reserved.

1.5 "Business Partner" means a legal entity that requires access to the Software in connection with Ordering Activity's internal business operations, such as customers, distributors and/or suppliers of Ordering Activity.

1.6 Reserved.

1.7 "Documentation" means SAP's documentation which is delivered or made available to Ordering Activity with the Software hereunder.

1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.9 "Modification" means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).

1.10 Reserved.

1.11 "SAP Materials" means any software, programs, tools, systems, data, or other materials made available by SAP to Ordering Activity in the course of the performance hereunder including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Ordering Activity to SAP relating to the Software and Documentation.

1.12 "SAP Support" means SAP's then-current SAP support offering specified in the applicable Order Forms and made available to Ordering Activity as stated in the applicable SAP Support Schedule incorporated herein (also available at www.sap.com/company/legal/index.epx) as of the effective date of the first Software Order Form issued under these GTCs. Such SAP Support Schedule is incorporated herein by reference. For the avoidance of doubt, such SAP Support Schedule shall apply to all Order Forms issued under these GTCs unless otherwise agreed by the parties.

1.13 "Software" means (i) any and all software products licensed to Ordering Activity hereunder as specified in Software Order Forms hereto, all as developed by or for SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Ordering Activity hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.

1.14 Reserved.

1.15 "Territory" means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the GTC.

1.16 "Third Party Software" means (i) any and all software products and content licensed to Ordering Activity hereunder as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Ordering Activity hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.

1.17 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.18 "Use Terms" means, with regard to Software specified in a Purchase Order, metric definitions and product-specific terms described in Exhibit 1 hereto or in an applicable Purchase Order.

2. LICENSE GRANT.

2.1 License.

2.1.1 Subject to Ordering Activity's compliance with all the terms and conditions herein, Contractor grants to Ordering Activity a non-exclusive, perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Ordering Activity's internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in a Purchase Order, unless terminated in accordance with Section 5 herein. This license does not permit Ordering Activity (without being limited specifically to such restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials; (iii) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms herein; or (iv) use Software components other than those specifically identified in the Purchase Order, even if it is also technically possible for Ordering Activity to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Ordering Activity's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.2 Ordering Activity agrees to install the Software only on information technology devices (e.g., hard disks or central processing units) identified by Ordering Activity pursuant to this Attachment A and that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Ordering Activity must hold the required licenses as stated herein and in the applicable Purchase Orders, for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Ordering Activity or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Attachment A relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule, a Schedule, an Order Form, or an Amendment.

2.2 Reserved.

2.3 Outsourcing Services. With SAP's prior written consent, Ordering Activity may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Ordering Activity in connection with the business of Ordering Activity for which the Software is herein licensed provided: (i) Ordering Activity and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms herein prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Ordering Activity shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Ordering Activity as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Ordering Activity or any other party, or in connection with such services provider's own business operations; (v) Ordering Activity shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition. Upon SAP request, Ordering Activity shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

3. Reserved.

4. DELIVERY.

4.1 Reserved.

4.2 Delivery of the Software and SAP Support. Contractor, through SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Ordering Activity. Risk of loss passes at the time of such electronic delivery. Ordering Activity agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Ordering Activity.

5. Reserved.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Reservation of Rights. The SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP AG (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Ordering Activity in Section 2 and 6.3 herein. Except for the rights set forth in Section 6.3 herein, Ordering Activity is not permitted to modify or otherwise make derivative works of the Software. Any such unauthorized works developed by Ordering Activity, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP or SAP AG.

6.2 Protection of Rights. Ordering Activity shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software in any manner. Reverse engineering of the Software and other SAP Materials is prohibited. Ordering Activity is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Ordering Activity must not change or remove SAP's copyright and authorship notices.

6.3 Modifications/Add-ons.

6.3.1 Conditioned on Ordering Activity's compliance with the terms and conditions of this Attachment A, Ordering Activity may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Attachment A, and shall be permitted to use Modifications and Add-ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1(a) herein. Ordering Activity shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. All Add-ons developed by SAP (either independently or jointly with Ordering Activity) and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Ordering Activity agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. All Add-ons developed by or on behalf of Ordering Activity without SAP's participation ("Ordering Activity Add-on"), and all rights associated therewith, shall be the exclusive property of Ordering Activity subject to SAP's rights in and to the Software; provided, Ordering Activity shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Ordering Activity Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Ordering Activity agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

6.3.2 Any Modification developed by or on behalf of Ordering Activity without SAP's participation or Ordering Activity Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Attachment A and/or provide Ordering Activity with access to the Software to which Ordering Activity is not directly licensed; nor permit mass data extraction from Software to any non-SAP software, including use, modification saving or other processing of data in the non-SAP software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP products.

6.3.3 Ordering Activity covenants, on behalf of itself and its successors and assigns, not to assert against Contractor, SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any Modifications developed by or on behalf of Ordering Activity without SAP participation or Ordering Activity Add-ons, or any other functionality of the SAP Software accessed by such Modification developed by or on behalf of Ordering Activity without SAP participation or Ordering Activity Add-on.

7. PERFORMANCE WARRANTY.

7.1 Warranty. Contractor warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP Support or under warranty), Ordering Activity or third-party software. Contractor does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Ordering Activity's business requirements. Provided Ordering Activity notifies Contractor in writing with a specific description of the Software's nonconformance within the warranty period and Contractor validates the existence of such nonconformance, Contractor will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Ordering Activity's remedy under this warranty.

7.2 Express Disclaimer. CONTRACTOR AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. This disclaimer does not apply to any warranties expressly provided in a Contractor contract with the U.S. Government.

EXHIBIT 1 TO ATTACHMENT A - PRODUCT SPECIFIC USE TERMS

The terms set forth below ("Use Terms") apply to any Named Users and Packages (both as defined in Section 1.1.1 hereof) licensed by an Ordering Activity pursuant to the Schedule contract. Except as otherwise set forth herein, each capitalized term referenced in these Use Terms shall have the meaning given it in this Attachment A.

1. LICENSING PRINCIPLES / RULES OF USE

1.1 Definitions

1.1.1 As used in these Use Terms: 1) each Software and/or Third Party Software (as defined in this Attachment A) product licensed pursuant to this Attachment A referencing these Use Terms may be referred to as a "Software Package" (when referencing only Software) or "Third Party Software Package" (when referencing only Third Party Software) or "Package" (when referencing both Software and Third Party Software); 2) "Named User" shall mean any individual authorized by Ordering Activity to Use (in accordance with the terms of this Attachment A) a Package, including without limitation employees of its Affiliates or its Business Partners; 3) "Named User License" shall mean the Metric and Licensed Level applicable to each Named User; 4) "Package License" shall mean the Metric and Licensed Level applicable to each Package; 5) "Metric" shall mean a) when referenced in the context of a Named User, the individual Named User category and type (and corresponding Named User definition setting for such Named User's Use rights) as further described in Section 2.1 hereof -and- b) when referenced in the context of a Package, the individual business metric corresponding with each Package as further described in Section 2.2 hereof; 6) "Licensed Level" shall mean a) when referenced in the context of a Named User, the quantity of Metric for which each individual Named User category and type is licensed -and- b) when referenced in the context of a Package, the quantity of Metric for which each individual Package is licensed; and 7) "Order Form" shall mean the order document for the Named Users and Packages licensed under this Attachment, including order documents placed directly with SAP or through an authorized reseller, distributor, OEM or other authorized partner of SAP.

1.2 Standard License Principles / Rules of Use

1.2.1 Named User License & Package License Required. Except as otherwise specifically provided in Sections 1.3.2 and 3 hereof with respect to applicability of Named User Licenses, 1) the Use of any Package requires both a Named User License and a Package License; 2) Ordering Activity needs to hold a Named User License for any individual accessing any Package, and such Named User License shall define the extent to which such individual may Use the Package, such Use of the Package in all cases being further subject to the Package License and otherwise in accordance with the terms of the Schedule contract.

1.2.2 Additional Named User Rules for SBOP and Legacy SBOP Software Not Licensed For Standalone Use. "SBOP" and "Legacy SBOP" shall mean any Software identified as SBOP or Legacy SBOP, respectively, in Exhibit 1 to these Use Terms. Unless otherwise specifically set forth herein, all references to "SBOP" shall be deemed to include any licensed Software identified under any Order Form as "Legacy SBOP"; however, references to "Legacy SBOP" shall only mean any licensed Software specifically identified as "Legacy SBOP" on Exhibit 1. Any licensed SBOP may only be Used by individuals licensed as a Developer User, Expert User, Business Analytics Professional User or BI Limited User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software). Any licensed Legacy SBOP may only be Used by individuals licensed as a Developer User, Expert User, Business Analytics Professional User, BI Limited User, or Business Information User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software).

1.2.3 Runtime Software. Licensed Package(s) may utilize limited functionality of other Packages, including but not limited to SAP NetWeaver Foundation, for which Ordering Activity does not hold a license ("Runtime Software"). Until Ordering Activity has expressly licensed the Runtime Software, Ordering Activity's Use of such Runtime Software is limited to access by and through the licensed Package(s), and any permitted Modifications thereto for the sole purpose of enabling performance of the licensed Package(s). In the event Ordering Activity Uses a Package to build and/or operate a custom developed or third party application, additional licenses may be required.

1.2.4 Country / Language Versions and Availability Restrictions. There are no applicable country/language specific versions licensed by Ordering Activity from SAP unless otherwise specifically stated in an Order Form. Packages may be subject to availability restrictions. Information about such restrictions including country availability, supported languages, supported operating systems and databases may be provided through the Product Availability Matrix (PAM) published at www.service.sap.com/pam or otherwise included in the Documentation.

1.3 Exceptional License Principles / Rules of Use for Special License Scenarios

1.3.1 This Section 1.3 sets forth the exceptional license principles / rules of Use for the following special license scenarios ("Special License Scenarios"), and, to the extent the exceptional license principles / rules of Use for any Special License Scenario identified in this Section 1.3 contradict the standard license principles / rules of Use set forth in the Schedule contract and Section 1.2 hereof, then the terms of this Section 1.3 shall control over those contradicting terms in Section 1.2 hereof.

1.3.2 Standalone Use. Software is licensed solely for Standalone Use if identified as such in the applicable Order Form. SBOP Software licensed from any resellers, distributors or other third parties may be Used solely for Standalone Use, unless otherwise agreed by SAP in writing in the applicable Order Form. "Standalone Use" means the Software (and any corresponding Third Party Software) may not be Used to access, directly or indirectly, in any manner whatsoever, any other Software and/or Third Party Software licensed from SAP, or an authorized reseller, distributor, OEM or other

authorized partner of SAP. Software licensed for Standalone Use, however, may be Used with other Software (and any corresponding Third Party Software) that is licensed for Standalone Use.

As a rule, the Use of Software licensed for Standalone Use does not require a Named User License in addition to the Package License for the respective Software itself. For avoidance of doubt, all SBOP and/or Sybase Software licensed by a Business Objects entity or a Sybase entity prior to its legal integration with a successive SAP entity is deemed licensed for Standalone Use only.

- 1.3.2.1 **Standalone Use of SBOP and Legacy SBOP Software.** Use of SBOP and Legacy SBOP licensed for Standalone Use does require a Named User License in addition to the Package License for the actual SBOP or Legacy SBOP, respectively.. The only Named User types authorized to Use SBOP licensed for Standalone Use are SAP Application Standalone Business Analytics Professional User, or SAP Application Standalone BI Business Analyst Limited User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software). The only Named User types authorized to use Legacy SBOP licensed for Standalone Use are SAP Application Standalone Business Analytics Professional User, SAP Application Standalone BI Limited User, or SAP Application Business Information Viewer User, and such Use shall be in accordance with each individual's respective Named User type (and subject to the applicable Licensed Level(s) for such Software).
- 1.3.3 **Restricted License.** If Ordering Activity acquired the Software bundled or otherwise provided in combination with or for use with a third party product ("OEM Application") from a third party, Ordering Activity has acquired a Restricted License. Ordering Activity may use each licensed copy of the Software only in conjunction with the OEM Application with which it was provided. Accessing data that is not specifically created or used by the OEM Application is in violation of this license. If the OEM Application requires the use of a data mart or data warehouse, the Software may be used with the data mart or data warehouse only to access data created or processed by the OEM Application. Restricted Licenses may not be combined with unrestricted licenses in the same Deployment.
- 1.3.4 **Subscription License.** Unless otherwise agreed in writing between the parties, if the Software is licensed on a subscription basis, Ordering Activity is granted a non-exclusive and non-transferable license to use the Software for a twelve-month term, renewable annually at Licensor's then current rate or such other term as mutually agreed in writing by the parties.
- 1.3.5 **Development License.** Unless otherwise agreed in writing between the parties, if Ordering Activity receives a development license, you may use the number and type of licenses acquired only to develop or test such developments. A development license cannot be used in or transferred to a production environment.
- 1.3.6 **Update License.** Unless otherwise agreed in writing between the parties, if you receive the Software as an update to a previously licensed product, your license to use the Software is limited to the aggregate number of licenses you have acquired for the previous product. If you choose to use the Software and the previous product simultaneously, the aggregate number of licenses used to access the Software and the previous product may not exceed the aggregate number of licenses you acquired for the previous product.
- 1.3.7 **Promotional License.** Unless otherwise agreed in writing between the parties, if you received the Software as a special offer or promotional license ("Promotional License"), you may only use the Promotional Licenses with a new Deployment. Promotional Licenses may not be added to or used with an existing Deployment or Project.
- 1.3.8 **Evaluation/Not for Resale License.** Unless otherwise agreed in writing between the parties, an Evaluation or Not for Resale License may be used only for the number and type of licenses specified and for the period specified on the Software packaging, ordering or shipping documentation. Upon expiration of such specified period, the Software associated with an Evaluation or Not For Resale license will not function unless Ordering Activity has obtained applicable permanent license keys. If the ordering or shipping documentation specifies a particular project, the Software may be used only with that project. An Evaluation License may only be used for evaluation purposes and may not be used for production purposes. Notwithstanding any other provision of this Attachment A, Software provided under an Evaluation or Not for Resale License are provided "AS-IS" without warranty of any kind, express or implied. An Evaluation License or Not for Resale License may be terminated by SAP upon written notice at any time.

2. **Metrics**

2.1 **Named User Principles and Metrics**

- 2.1.1 **Named User Principles.** Except as otherwise specifically provided in Sections 1.3.2 and 3 hereof with respect to applicability of Named User Licenses, only appropriately licensed Named Users may Use a Package, and such Use shall be subject to the "Named User License" and the "Package License", and be otherwise in accordance with the terms of the Attachment A. The total number of licensed SAP Application Limited Professional Users must under no circumstances exceed the sum of licensed SAP Application Professional Users and SAP Application Business Expert Users. The transfer of a Named User License from one individual to another may only be done in if the individual to which the Named User License is assigned (i) is on vacation, (ii) is absent due to sickness, (iii) has his/her employment terminated, (iv) is moved into a new job function which no longer requires him/her to Use any Packages or (v) is subject to a condition that is otherwise agreed by SAP.

- 2.1.2 Important Note for Ordering Activities with Contracts from 2006 and Earlier. Such Ordering Activities may have licensed one of the following previous user types: mySAP.com Users, SAP Business Suite Users, SAP ERP Users, Individual SAP solutions Users.
Ordering Activities that have already licensed one or several of the above user types are permitted to license additional users of the same user types. Such Ordering Activities are not permitted to license SAP Application Users within their existing license contract. Ordering Activities with contracts from 2006 or later that contain SAP Application users are not permitted to license any of these previous user types.
- 2.1.2 Named User Metric – Categories, Types and Corresponding Definitions.
Named User Metrics, including categories, types and corresponding definitions, are stated in Exhibit 2, which is incorporated herein by reference.
- 2.2 **Package Principles and Metrics**
- 2.2.1 Package Principles. Each Package is licensed based upon the Metric applicable to it, and in no case may Use of a Package exceed the License Level for which the Package is licensed.
- 2.2.2 Package Metrics – Types and Corresponding Definitions.
Package Metrics, including types and corresponding definitions, are stated in Exhibit 2, which is incorporated herein by reference.
3. **PACKAGE SPECIFIC TERMS / USE RULES**
- 3.1 Package Licenses. A Package License for any Package referenced in Exhibit 3 shall include, and be subject to, the specific terms / Use rules applicable to such Package as outlined in Exhibit 3, which is incorporated herein by reference.
- 3.2 Applicability. This Section 3.2 applies to any Package (including, without limitation, databases) licensed pursuant to an Order Form and identified as a Third Party Software (including databases) in such Order Form (as used herein, “Third Party Software Package”) and control over any conflicting terms set forth in the Attachment A. All Third Party Software Packages are restricted for Use solely in conjunction with the particular Package intended by SAP to be used therewith or with which SAP provides the Third Party Software Package, and Third Party Software Packages may not be used with any other Package, or on an individual basis. Unless otherwise specifically provided in Section 3 of the Use Terms, any Use of the Third Party Software Packages (whether productive or non-productive) shall count against the Licensed Level for any applicable Metric.
- 3.2.1 Exceptions from Attachment A for Third Party Software Packages.
- 3.2.1.1 Section 6.3 (Modification / Add-on) of Attachment A shall not apply to any Third Party Software Packages. Ordering Activity shall not make Modifications or Add-ons to Third Party Software Packages, or otherwise modify Third Party Software Packages unless expressly authorized by SAP in writing.
- 3.3 Third Party Databases.
- 3.3.1. If a runtime database is licensed and the Order Form does not exclude any Packages licensed thereunder from such runtime database license, then the following terms shall govern Ordering Activity’s Use of such runtime database:
- 3.3.1.1. Ordering Activity may only Use the runtime database licensed pursuant an Order Form referencing these Use Terms in conjunction with its Use of the Packages licensed pursuant to such Order Form. In the event Ordering Activity Uses the licensed runtime database other than as specified in this paragraph, a full use license, including programming tools, must be licensed directly from an authorized vendor.
- 3.3.2. If a runtime database is licensed and the Order Form excludes certain Software Packages licensed thereunder from such runtime database license (“Excluded Components”), then the following terms shall govern Ordering Activity’s Use of such runtime database:
- 3.3.2.1. Ordering Activity may only Use the runtime database licensed pursuant an Order Form referencing these Use Terms in conjunction with its Use of the Packages licensed pursuant to such Order Form that are not Excluded Components. In the event Ordering Activity Uses the licensed runtime database other than as specified in this paragraph, a full use license, including programming tools, must be licensed directly from an authorized vendor.
- 3.3.2.2. The Excluded Components may require a database product. Respective to the Excluded Components: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of the Excluded Components; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.
- 3.3.3. If a runtime database is not licensed, then the following terms shall apply:

3.3.3.1 The Packages licensed pursuant to an Order Form referencing these Use Terms may require a database product. Respective to such Packages: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of such Software and/or third party software; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.

3.4 **Standalone Use for Third Party Databases.**

If an Order Form referencing these Use Terms includes a Standalone Use restriction, then the following terms shall apply:

3.4.1 The Packages licensed pursuant to an Order Form referencing these Use Terms may require a database product. Respective to Packages: (i) neither the Order Form nor this Attachment A contain a license to use any database product, even where integrated or pre-installed as part of such Software and/or third party software; (ii) each database product is subject to its respective vendor license agreement; (iii) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained directly from a third party vendor; and (iv) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party vendor, and SAP has no responsibility in this regard.

3.5 **Pass-Through Terms.**

Use of third party database products and address directories may be subject to additional terms and conditions required by SAP's suppliers. Such additional terms and conditions are set forth in Exhibit 4, "Pass-Through Terms for Third Party Databases" and Exhibit 5 "Pass-Through Terms for Address Directories," respectively.

3.6 **Open Source Software.**

Applicable specific conditions related to certain open source products made available by SAP are part of the applicable product documentation and/or delivered with the Software as a "README" file and apply to Ordering Activity's use of any such open source products. The definition of open source can be found under www.opensource.org/.

3.7 **SAP Best Practices.**

Software Packages may be delivered with settings and master data that have been pre-configured to address the requirements of a specific industry sector or country (SAP Best Practices). SAP Best Practices are not licensed for use on productive systems.

3.8 **SAP Tools.**

The Software, particularly the ABAP Workbench and SAP NetWeaver, contains software tools. Ordering Activity may only use these tools to program Modifications or to create Add-ons to the SAP software in accordance with this Attachment A. The tools may not be transferred, either in whole or in part, into modified or created software.

3.9 **Function Modules.**

The Software may contain function modules, which are stored in a function library. Some of these function modules carry a release indicator for transfer into modified or newly created software. Only these function modules may be transferred by the Ordering Activity into Modifications or Add-ons to the software. The function modules may not be modified or decompiled unless otherwise permitted under this Attachment.

Exhibit 1 - Legacy SBOP and SBOP Software

Legacy SBOP

Business Intelligence	
SAP BusinessObjects BI Starter Package	
SAP BusinessObjects BI Package (CPU)	
SAP BusinessObjects BI Package (user)	

SBOP

Business Intelligence	Use Rights that do not require a named user license
BA&T SAP BusinessObjects BI Suite (user)	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom,

	sort, search, filter, drill, apply basic formatting) against predefined reports
BA&T SAP BusinessObjects BI Suite (Concurrent Session license ("CS"))	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against predefined reports
BA&T SAP BusinessObjects Business Intelligence Platform (user)	Access platform services and view environment.
BA&T SAP BusinessObjects Business Intelligence Platform (CS)	Access platform services and view environment.
BA&T SAP BusinessObjects Business Intelligence Platform Mobile add-on (user)	View (i.e., refresh and interact) Mobile-enabled content
BA&T SAP BusinessObjects Business Intelligence Platform Mobile add-on (CS)	View (i.e., refresh and interact) Mobile-enabled content
BA&T SAP Crystal Reports (user)	View (i.e., refresh and schedule) reports
BA&T SAP Crystal Reports (CS)	View (i.e., refresh and schedule) reports
BA&T SAP BusinessObjects Web Intelligence (user)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) a predefined report
BA&T SAP BusinessObjects Web Intelligence (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) a predefined report
BA&T SAP BusinessObjects Analysis edition for OLAP (user)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for OLAP (CS)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for Office (user)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Analysis edition for Office (CS)	View (i.e., refresh and interact) documents
BA&T SAP BusinessObjects Dashboard (user)	View (i.e., refresh and interact) dashboard models
BA&T SAP BusinessObjects Dashboard (CS)	View (i.e., refresh and interact) dashboard models
BA&T SAP BusinessObjects Explorer (user)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer (CS)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer accelerated package (user)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Explorer accelerated package (CS)	View (i.e., search, view and navigate) data sets
BA&T SAP BusinessObjects Integration, version for ESRI GIS software by APOS (CS)	View data from business applications in a report, analysis or dashboard (indirect access)
BA&T SAP BusinessObjects Integration, version for ESRI GIS software by APOS (User)	View data from business applications in a report, analysis or dashboard (indirect access)
BA&T SAP BusinessObjects Predictive Workbench by IBM	Access platform services; customize, personalize dashboards, BI widgets, and user profiles; view (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against predefined reports
Enterprise Information Management	
SAP BusinessObjects Operational enterprise information mgmt package	View and drill down on information, read-only access to the application.
SAP BusinessObjects Analytical enterprise information mgmt package	View and drill down on information, read-only access to the application.
BA&T SAP BusinessObjects Data Services	View and drill down on information, read-only access to the application.
BA&T SAP BusinessObjects Information Steward	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Information Steward Multi-Source Integrators by MITI Add-on	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Event Insight	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Federator	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Integrator (DI)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Data Quality Management (DQM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects DQM, version for SAP Solutions	View and drill down on reports, read-only access to the application.

BA&T SAP BusinessObjects Data Quality Management SDK	View and drill down on reports, read-only access to the application.
GRC	
BA&T SAP BusinessObjects Access Control	Managers, executives and auditors who receive alerts, access reports and dashboards. End users who submit access requests or self-services. Access request approvers, certification reviews and remediation actions.
BA&T SAP BusinessObjects Process Control	Users who view reports & analytics. Such as control testing results, state of 'compliance health' of the organization reports, control –risk coverage reports, or reports on state of control testing for a process or organization.
BA&T SAP BusinessObjects Risk Management	Users designated or acting as a risk owner to review and test assumptions and make adjustments, user who utilize the system for reports or supporting audits
BA&T SAP BusinessObjects GTS, Export	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Import	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Restitution	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Trade Preferences	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Bundle	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Goods Movement with EMCS	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects GTS, Sanction Party List Service	View and drill down on reports, read-only access to the application.
BA&T SAP Electronic Customs Processing for AES (Automated Export System)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Electronic Invoicing for Brazil (NFE - Inbound)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Electronic Invoicing for Brazil (NFE - Outbound)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Sustainability Performance Management	View and drill down on reports, read-only access to the application other than users involved in the data-gathering process who respond to approval requests, enter sustainability-related data manually, and respond to surveys/workflows received. Maps to pre-configured roles of approver, business contributor and analyst
EPM	
BA&T SAP BusinessObjects Planning & Consolidation, version for the Microsoft Platform (BPC)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning & Consolidation, version for SAP NetWeaver (BPC)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning, version for the Microsoft Platform	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning, version for SAP NetWeaver	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Consolidation, version for the Microsoft Platform	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Consolidation, version for SAP NetWeaver	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Planning & Consolidation, SAP NetWeaver Platform Access Component	Not Applicable
BA&T SAP BusinessObjects Planning & Consolidation, Microsoft Platform Access Component	Not Applicable
BA&T SAP BusinessObjects Strategy Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Spend Performance Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Financial Information Management (FIM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Intercompany	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Financial Consolidation	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Profitability and Cost Management	View Profitability and Cost Management data via MDX connector

BA&T SAP BusinessObjects Supply Chain Performance Management (SCPM)	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Disclosure Management	View and drill down on reports, read-only access to the application.
BA&T SAP BusinessObjects Notes Management	View and drill down on reports, read-only access to the application.
Mid Market solutions for Business Intelligence	
BA&T SAP BusinessObjects Edge BI, standard package (user)	View (i.e. refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration (user)	View (i.e. refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management (user)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, standard package (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management (CS)	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, standard package NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data integration NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI, version with data management NUL add-on	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.
BA&T SAP BusinessObjects Edge BI Publishing Add-On	View (i.e., refresh, schedule, export, zoom, sort, search, filter, drill, apply basic formatting) against a predefined report.

Exhibit 2 - Named User Metrics and Package Metrics

Metrics Used with Named Users

SAP Application Developer User is a Named User authorized to access the development tools provided with the licensed Software for the purpose of making Modifications and/or Add-ons to the licensed Software and also includes the rights granted under the SAP NetWeaver Developer User and SAP Application Employee User.

SAP Application Business Expert User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and also includes the rights granted under the SAP Application Professional User.

SAP Application Professional User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Limited Professional User.

SAP Application Limited Professional User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Business Information User. The license agreement has to define in detail the limited use rights being performed by such Limited Professional User.

SAP Application Business Information User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with licensed Legacy SBOP, and reports created through Use of licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals. Each SAP Application Business Information User also includes the rights granted under the SAP Application Employee User.

SAP Application Employee User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) travel planning / expense reporting self-services, (iii) perform procurement self-services, and (iv) room reservation self-services. Each SAP Application Employee User also includes the rights granted under the SAP E-Recruiting User, SAP Learning User and the SAP Application ESS User.

SAP Application Employee Self-Service User is a Named User authorized to perform the HR self-services role of employee time and attendance entry supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals. Each SAP Application ESS User also includes the rights granted under the SAP Application Employee Self-Service Core User and the SAP Human Capital Performance Management User.

SAP Application Employee Self-Service Core User is a Named User authorized to perform the following HR self-services roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) employee records maintenance, (ii) employee directory, and (iii) benefits and payment services. Further, an ESS Core User is also authorized to access "Non-SAP Content" that resides on Ordering Activity's "SAP Portal", so long as accessing such Non-SAP Content does not require or result in any Use of the licensed Software (beyond access to such Non-SAP Content as

it resides on Ordering Activity's SAP Portal). As used in this ESS Core User definition, (i) "Non-SAP Content" means information created through no Use of the licensed Software and (ii) "SAP Portal" means any portal created by Ordering Activity Using SAP Enterprise Portal Software (as provided with the licensed SAP NetWeaver Software) which provides appropriately licensed Named Users a common access point by which to Use licensed SAP Software.

SAP Application HANA Administrator User is a Named User authorized to perform all roles supported by licensed HANA Software (excluding the right to make Modifications and/or Add-ons) where Used solely in conjunction with Non-SAP Applications, and includes the rights granted under the SAP HANA Application Viewer User.

SAP Application Standalone HANA Administrator User is a Named User authorized to perform all roles supported by HANA Software licensed for Standalone Use (excluding the right to make Modifications and/or Add-ons) where used solely in conjunction with specific application(s) that are licensed SAP Proprietary Information (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner subject to the contractual Standalone Use restriction, and includes the rights granted under the SAP HANA Standalone Viewer User.

SAP Application HANA Viewer User is a Named User authorized to Use the licensed HANA Software to enable report reading and viewing functions solely in conjunction with Non-SAP Applications.

SAP Application Standalone HANA Viewer User is a Named User authorized to Use the HANA Software licensed for Standalone Use to enable report reading and viewing functions solely in conjunction with application(s) that are licensed Software or Third Party Software (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner (subject to the contractual Standalone Use restriction).

SAP Application HANA Administrator Upgrade User is a Named User authorized to perform all roles supported by licensed HANA Software (excluding the right to make Modifications and/or Add-ons) where Used solely in conjunction with Non-SAP Applications provided such Named User is also an individual licensed from SAP as an SAP Application HANA Viewer User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application HANA Viewer User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Standalone HANA Administrator Upgrade User is a Named User authorized to perform all roles supported by HANA Software licensed for Standalone Use (excluding the right to make Modifications and/or Add-ons) where used solely in conjunction with specific application(s) that are licensed Software or Third Party Software (also contractually restricted for Standalone Use) and that do not otherwise by themselves require an SAP Named User license and/or Non-SAP Applications used solely in a Standalone Use manner subject to the contractual Standalone Use restriction provided such Named User is also an individual licensed from SAP as an SAP Application Standalone HANA Viewer User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Standalone HANA Viewer User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Analytics Professional User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and includes the rights granted under the SAP Application BI Limited User. For purposes of clarification, an SAP Application Business Analytics Professional User may extract data from any data source into SBOP and/or push data out of SBOP into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into SBOP where the data source is non-SBOP Software and/or third party software licensed from SAP).

SAP Application Business Analytics Professional Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application BI Limited User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application BI Limited User for so long as Ordering Activity continues to receive support under the license agreement. For purposes of clarification, an SAP Application Business Analytics Professional Upgrade User may extract data from any data source into SBOP and/or push data out of SBOP into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) and such Use is otherwise in accord with the terms of this Attachment (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into SBOP where the data source is non-SBOP Software and/or Third Party Software licensed from SAP).

SAP Application BI Limited User is a Named User who is solely authorized to Use one (1) of the following SBOP components, subject to each SBOP component being licensed: (i) Mobile Designer, (ii) Crystal Reports Designer, (iii) WEB Intelligence Designer, (iv) Explorer Designer, (v) Dashboard Designer, (vi) SAP BusinessObjects Analysis software edition for OLAP, or (vii) SAP BusinessObjects Analysis software edition for Microsoft Office. For purposes of clarification, an SAP Application BI Limited User

may extract data from any data source into one (1) of the stated SBOP components (where licensed) and/or push data out of one (1) of the stated SBOP components (where licensed) into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) (albeit an additional SAP Named User license will not be required solely for the one-way extraction of data into one (1) of the stated SBOP components where the data source is non-SBOP Software and/or Third Party Software licensed from SAP).

SAP Application Standalone Business Analytics Professional User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) licensed for Standalone Use and also includes the rights granted under the SAP Application Standalone BI Limited User.

SAP Application Standalone BI Limited User is a Named User who is solely authorized to Use one (1) of the following SBOP components, subject to each SBOP component being licensed for Standalone Use: (i) Mobile Designer, (ii) Crystal Reports Designer, (iii) WEB Intelligence Designer, (iv) Explorer Designer, (v) Dashboard Designer, (vi) SAP BusinessObjects Analysis software edition for OLAP, or (vii) SAP BusinessObjects Analysis software edition for Microsoft Office. The SAP Application Standalone BI Limited User also includes the rights granted under the SAP Application Business Information Viewer User.

SAP Application Business Information Viewer User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with licensed Legacy SBOP, and reports created through Use of licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals.

SAP Learning User is a Named User who is authorized to access solely the following learning solutions on SAP's price list, provided that those learning solutions are licensed. A SAP Learning User is not entitled to access other SAP solutions or solution components. The applicable learning solutions offered by SAP comprise the following:

7002075 SAP Learning Solution
 7003485 SAP Enterprise Learning Environment
 7009559 SAP Acrobat Connect Professional Learning by Adobe
 7009558 SAP Acrobat Connect Professional Meeting by Adobe
 7009560 SAP Productivity Pak by RWD - excl. North America
 7009561 SAP Productivity Pak Help Launch Pad by RWD - excl. North America
 7009562 SAP Productivity Composer by RWD - excl. North America
 7009563 SAP Productivity Composer Help Launch Pad by RWD - excl. North America
 7009639 SAP Productivity Pak by RWD - North America only
 7009640 SAP Productivity Pak Help Launch Pad by RWD - North America only
 7009641 SAP Productivity Composer by RWD - North America only
 7009642 SAP Productivity Composer Help Launch Pad by RWD - North America only

SAP E-Recruiting User is a Named User authorized to access the E-Recruiting engine only. E-Recruiting Users are not entitled to access other SAP solutions or solution components.

SAP Human Capital Performance Management User is a Named User authorized to access the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals to maintain: (i) employee appraisals, (ii) talent and skill profiles, and (iii) profile match up.

SAP Manager Self-Service User is a Named User authorized to perform one or more of the following manager self-services related roles supported by the licensed Software (excluding SBOP): (i) request administrative changes using processes and forms contained within HCM, (ii) create requisition requests and candidate assessments, (iii) perform talent assessments and appraisals, (iv) plan and approve compensation, (v) obtain an budget overviews, (vi) organize project management tasks, (vii) perform planning tasks, (viii) approve travel requests and expenses, and (ix) perform workflow tasks. SAP Manager Self-Service User also includes the rights granted under the SAP Application Employee User.

SAP Banking User is a Named User solely authorized to access the specified industry packages for banks. Banking Users are not entitled to access other SAP solutions or solution components.

SAP Retail Store User is a Named User working in Ordering Activity's retail store as an associate who is solely authorized to perform non-managerial retail store / point-of-sale related roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Application Employee User.

SAP Logistics User is a Named User solely authorized to perform following tasks for the applicable licensed Supply Chain Execution Software:

- Transportation Management: Looking up a freight contract, tracking a certain shipment and similar activities, update master data (rates, lanes, locations), Transportation request entry, transportation planning on, responding to RFP (request for proposal) for tendering, Event Management (EM) confirmation, charge calculation verification and similar activities.
- Warehouse Management: Confirm goods receipts and putaway, goods issues and picking and stock movements including replenishment, and production staging and enter physical inventory counts.
- Product and Item Traceability: Viewing a serialized and/or any tracked object on ad hoc basis, such as querying its current or past location or ascertaining product genealogy. User accessing product traceability solutions on an ad hoc basis to report goods movement or view traceability reports.

For Ordering Activity employees, the SAP Logistics User also includes the rights granted under the SAP Application Employee User.

SAP Shop Floor User is a Named User working in Ordering Activity's production facilities who is solely authorized to perform one or more of the following roles supported by the licensed Software: (i) display work instructions, and document activities and operations, (ii) confirm goods receipts, goods issues and stock movements, (iii) enter production order confirmations, (iv) record product or production information, e.g. quality inspection results or plant/process/equipment data, (v) enter production issues and related service requests, and (vi) reporting or dashboarding related to items (i)-(v). SAP Shop Floor also includes the rights granted under the SAP Application Employee User.

SAP Maintenance Worker User is a Named User who is a maintenance worker solely authorized to perform one or more of the following roles supported by the licensed Software (excluding SBOP): (i) confirm maintenance notifications, (ii) enter time confirmations, goods issues, stock movements and completion confirmations into maintenance work orders, (iii) enter service requests and service request entry sheets, and (iv) any maintenance activities related to items (i) – (iii). SAP Maintenance Worker User also includes the rights granted under the SAP Application Employee User.

SAP Engineering User is a Named User that is authorized to access the following data and objects solely via the Access Control Component (ACC) of the licensed SAP Collaborative Product Development Package, excluding in all cases access to any data or objects by or through SBOP portfolio products:

- (i) Engineering-Bill-of-Material and Product Structure Management data;
- (ii) Design Documents related to data under (i) in Document Management System (DMS);
- (iii) the Business Context Viewer; and
- (iv) 3D visualization content.

In the case of individuals who are employees of Ordering Activity, the SAP Engineering User also includes the rights granted under the SAP Application Employee User.

SAP Procurement Self-Service and Collaborator User is a Named User who is authorized to perform the following self-service roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals to: (i) create shopping carts or requisitions, check, receive or collaborate items in a requisition, (ii) request sourcing or contracting support, review and/or approve items for sourcing or contracting other than as a personnel manager, participate in RFX scoring, provide supplier feedback, view reports or search system content, and (iii) upload compliance information or recipe component information. Each SAP Procurement Self-Service User also includes the rights granted under the SAP Application ESS User.

SAP Partner Channel User is a Named User who is an employee of Business Partners who is solely authorized to perform one or more of the following channel management functionalities contained within the licensed Software (excluding SBOP): (i) Channel Marketing, (ii) Channel Sales, (iii) Partner Order Management, (iv) Channel Service, (v) Partner & Channel Analytics, and (vi) Partner Management.

SAP Solution Extension Limited User is a Named User solely authorized to Use one (1) Third Party Solution licensed by SAP. SAP Solution Extension Limited Users are not entitled to access other SAP solutions, solution components, or data stored in such solutions. SAP Solution Extension Limited User can only be licensed to access the following product: "SAP extended ECM by Open Text", SAP Digital Asset Management by Open Text and "SAP Intelligence Analysis for Public Sector by Palantir" and SAP Application Visualization by iRise (including the add-on for SRM, add-on for general SAP solutions).

SAP CRM User is a Named User only authorized to Use (excluding the right to make Modifications and/or Add-ons) CRM Software licensed under this Attachment A (if any, the "Licensed CRM Software"). An SAP CRM User may extract data from any data source into any Licensed CRM Software and/or push data out of any Licensed CRM Software into any data source provided Ordering Activity has secured an appropriate license for all such data source(s) and such Use is otherwise in accord with the terms of this Attachment A. An additional SAP Named User License will not be required solely for the one-way extraction of data into Licensed CRM Software where the data source is Software (other than Licensed CRM Software) and/or third party software licensed under this Attachment A.

SAP CRM Rapid Deployment Edition User is a Named User solely authorized to (i) access the SAP CRM Rapid Deployment Edition and (ii) perform SAP ERP order-status checks through SAP CRM. Access to other SAP software requires a SAP Application Business Expert User, a SAP Application Professional User or a SAP Application Limited Professional User license. The rights granted to a SAP CRM Rapid Deployment Edition User are included in the existing SAP Application Business Expert User, SAP Application Professional User and SAP Application Limited Professional User. The SAP CRM Rapid Deployment Edition User also includes the rights granted under the SAP Application Employee User.

SMB Professional User on SAP Business Suite is a Named User authorized to access the same functional scope as in 2005. The exact functional scope can be obtained from the Additional Terms & Conditions Document for SAP Resellers. The license of this user is reserved to already existing SMB Professional User customers.

SAP NetWeaver Gateway User is a Named User who is authorized to Use licensed Software from the SAP Business Suite portfolio solely through a separate application that indirectly accesses the licensed Software via SAP NetWeaver Gateway. Service calls through SAP NetWeaver Gateway may use stateless protocols only. A stateless protocol is one that treats each request for information as an independent transaction that is unrelated to any previous request so that the communication consists of independent pairs of requests and responses.

SAP Platform Advanced User is a Named User who is authorized to Use licensed Software solely through a separate application: A) that (i) adds any new, independent functional components for business processes not contained by the SAP Software, (ii) is

developed using a licensed SAP technology, and (iii) connects to and/or communicates through published SAP application program interfaces; and B) which shall in no case (i) enable the bypassing or circumventing of any of the restrictions set forth in this Attachment A, (ii) provide Ordering Activity with access to any Software to which Ordering Activity is not licensed, and/or (iii) permit mass data or metadata extraction from SAP Software to non-SAP software for the purpose of creating a new system of record for that data or metadata. The SAP Platform Advanced User also includes the rights granted under the SAP Platform Standard User and SAP Platform Extended User.

SAP Platform Extended User is a Named User who is authorized to Use licensed Software solely through, and to the extent enabled by, one or more applications that (i) have been certified by SAP's Integration and Certification Center as a platform user compliant solution ("PULCS") for SAP Platform Extended Users (a list of then current PULCS applications certified for SAP Platform Extended Users can be found at "https://ecohub.sdn.sap.com/irh/ecohub/pul_compliant" (including any successor site(s) as made known by SAP from time to time, the "PULCS Site")) and (ii) Ordering Activity has first secured all appropriate rights to use such PULCS application(s) from the applicable licensor(s) (i.e. no Software and/or third party software licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s), shall be considered a PULCS application for purposes of this Named User type, even if such applications are reflected on the PULCS Site).

SAP Platform Standard User is a Named User who is authorized to Use licensed Software solely through, and to the extent enabled by, one or more applications that (i) have been certified by SAP's Integration and Certification Center as a platform user compliant solution ("PULCS") for SAP Platform Standard Users (a list of then current PULCS applications certified for SAP Platform Standard Users can be found at "https://ecohub.sdn.sap.com/irh/ecohub/pul_compliant" (including any successor site(s) as made known by SAP from time to time, the "PULCS Site")) and (ii) Ordering Activity has first secured all appropriate rights to use such PULCS application(s) from the applicable licensor(s) (i.e. no Software and/or third party software licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s), shall be considered a PULCS application for purposes of this Named User type, even if such application(s) are reflected on the PULCS Site).

SAP NetWeaver Developer User is a Named User who is authorized (only where the SAP NetWeaver Foundation for Third Party Applications Software is licensed) to access the development tools provided with such Software for the purpose of developing and modifying applications (i) that are not licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s) and (ii) for which Ordering Activity has first secured all appropriate rights from any applicable licensor(s). The SAP NetWeaver Developer User also includes the rights granted under the SAP NetWeaver Administration User.

SAP NetWeaver Administrator User is a Named User who is authorized (only where the SAP NetWeaver Foundation for Third Party Applications Software is licensed) to access the development tools provided with such Software for the purpose of administering and managing applications (i) that are not licensed from SAP AG, any SAP AG distributor(s), or any authorized resellers of SAP AG or its distributor(s) and (ii) for which Ordering Activity has first secured all appropriate rights from any applicable licensor(s).

SAP Business Suite/ individual SAP solution Developer User is a Named User authorized to access the development tools provided with the licensed Software for the purpose of making Modifications and/or Add-ons to the licensed Software and also includes the rights granted under the SAP NetWeaver Developer User and SAP Business Suite Employee User.

SAP Business Suite / individual SAP solution Business Expert User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) and also includes the rights granted under the SAP Business Suite Professional User

SAP Business Suite / individual SAP solution Professional User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Business Suite/ individual SAP solution Limited Professional User.

SAP Business Suite / individual SAP solution Limited Professional User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) and also includes the rights granted under the SAP Business Suite Business Information User. The license agreement has to define in detail the limited use rights being performed by such Limited Professional User.

SAP Business Suite / individual SAP solution Business Information User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, and reports created through Use of the licensed Software by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals. Each SAP Business Suite Business Information User also includes the rights granted under the SAP Business Suite Employee User.

SAP Business Suite / individual SAP solution Employee User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) travel planning / expense reporting self-services, (iii) perform desktop procurement self-services, and (iv) room reservation self-services. Each SAP Business Suite Employee User also includes the rights granted under the SAP E-Recruiting User, SAP Learning User and the SAP Business Suite ESS User

SAP Business Suite / individual SAP solution Employee Self-Service User is a Named User authorized to perform the HR self-services role of employee time and attendance entry supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals. Each SAP Business Suite ESS User also includes the rights

granted under the SAP Business Suite Employee Self-Service Core User and the SAP Human Capital Performance Management User.

SAP Business Suite / individual SAP solution Employee Self-Service Core User is a Named User authorized to perform the following HR self-services roles supported by the licensed Legacy SBOP (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) employee records maintenance, (ii) employee directory, and (iii) benefits and payment services. Further, an ESS Core User is also authorized to access "Non-SAP Content" that resides on Ordering Activity's "SAP Portal", so long as accessing such Non-SAP Content does not require or result in any Use of the licensed Software (beyond access to such Non-SAP Content as it resides on Ordering Activity's SAP Portal). As used in this ESS Core User definition, (i) "Non-SAP Content" means information created through no Use of the licensed Software and (ii) "SAP Portal" means any portal created by Ordering Activity Using SAP Enterprise Portal Software (as provided with the licensed SAP NetWeaver Software) which provides appropriately licensed Named Users a common access point by which to Use licensed SAP Software.

SAP Business Suite Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite B2B Sales User is a Named User who is an employee of Business Partners who is solely authorized to perform one or more of the following order management related roles supported by the licensed Software: (i) check product availability, (ii) configure an order, (iii) place an order, (iv) check order status, and (v) order management activities related to items (i) – (iv).

SAP ERP Business Expert Upgrade User is a Named User authorized to perform all roles supported by SBOP (excluding the right to make Modifications and/or Add-ons to SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP Application Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Business Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Legacy SBOP, and reports created through Use of the licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as an SAP Application Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Application Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as an SAP Application Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Application Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as a SAP Business Suite Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, and reports created through Use of the licensed Software by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as a SAP Business Suite Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP Business Suite Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as a SAP Business Suite Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP Business Suite Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Professional Upgrade User is a Named User authorized to perform operational related and system administration / management roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Limited Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Limited Professional User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Limited Professional Upgrade User is a Named User authorized to perform limited operational roles supported by the licensed Software (excluding SBOP) provided such Named User is also an individual licensed from SAP as an SAP ERP Business Information User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Business Information User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Business Information Upgrade User is a Named User authorized to Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Legacy SBOP, and reports created through Use of the licensed Legacy SBOP by appropriately licensed Named Users, solely for such individual's own purposes and not for or on behalf of other individuals provided such Named User is also an individual licensed from SAP as an SAP ERP Employee User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Employee User for so long as Ordering Activity continues to receive support under the license agreement.

SAP ERP Employee Upgrade User is a Named User authorized to perform the following roles supported by the licensed Software (excluding SBOP), all solely for such individual's own purpose and not for or on behalf of other individuals: (i) Use (excluding the right to modify and/or customize) standard and interactive reports delivered with the licensed Software, (ii) perform talent management self-services (including employee appraisals, employee development plans, employee training registration, and employee opportunity inquiry and response), (iii) travel planning / expense reporting self-services, (iv) perform desktop procurement self-services, and (v) room reservation self-services provided such Named User is also an individual licensed from SAP as an SAP ERP Employee Self Service (ESS) User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Ordering Activity must be subscribed to and fully paid on support for both this User and the underlying SAP ERP Employee Self Service (ESS) User for so long as Ordering Activity continues to receive support under the license agreement.

Metrics Mainly Used with Enterprise Extensions

Enterprise Foundation Package comprises SAP ERP and five (5) SAP Application Professional Users.

Orders per Year are defined as the total number of externally created sales and service or purchase orders processed per year. Externally created orders are those orders that are not entered by a SAP Named User.

Master Records represent one contractual relationship between the company and an employee whose payroll is being calculated.

Positions are defined as the positions within an organization, business unit, geographic location, etc. that will potentially be recruited using SAP E-Recruiting. Note that this is not the same as the number of vacancies in any given year. Each position equates to one and only one employee, regardless of whether the position is defined as part-time or full-time. For example, assume

a company has 10,000 positions and 4,000 are white collar and 6,000 blue collar. They use SAP E-Recruiting to fill the white collar positions, but some other solution (or paper) to fill the blue collar positions. The SAP E-Recruiting engine price would be based on $4,000/500 = 8$ blocks.

Learner is defined as any individual accessing the application and engaging in any learning services being processed by the application.

Active Customers / Vendors are defined as active business partner master records with financial transactional data within the last 2 years. Business Partner refers to active business partners (including but not limited to customers, vendors master, subsidiaries or headquarters).

Revenue is defined as the annual income that a company receives from its normal business activities and other revenue from interest, dividends, royalties or other sources.

For SAP Account & Trade Promotion Management and SAP Trade Promotion Optimization only the revenue needs to be considered which is associated with the business or division which the capabilities of this package will be applied against.

Operating Budget is defined as total annual public sector budget of SAP customer (i.e. agency, institution, program or department)

Program Budget is defined as the budget for applying the defense organization resources (organic or contracted) to deliver the requisite capability defined by the program delivery mandate and managed in the licensed Software.

Assets under Management are defined as the total assets disclosed in the balance sheet, insofar processed by the SAP Software.

User is defined as the individual directly or indirectly accessing the Software.

For SAP Real Estate Management: User is defined as the individual who manages office, retail and industrial property and similar portfolios. It is applied for both, owned and operated space, and includes commercial as well as corporate real estate management.

For SAP Oil & Gas secondary Distribution: User is defined as the individual accessing one or more SAP Oil & Gas Secondary Distribution transaction codes.

Rental Units are defined as all rental objects that are managed with SAP Real Estate Management.

Parcels of Land are defined as units of land managed by the Software.

Employees are defined as total number of employees (including contract workers) employed by the Ordering Activity.

Commission Recipients are persons who receive payments of any type via SAP Incentive and Commissions Management.

WCM Plant is defined as a physical plant or a network location.

Service Transactions are defined as the total sum per annum of tickets/cases, complaints, incidents, service contracts, warranty claims and service orders per business support functional domain.

Financial Objects are defined as the number of financial objects (sum of Group Account, Operational Account, Cost Element, company, profit center, cost center) stored in the Master Data Governance system.

Hedge Volume refers to the volume of financial assets and/or liabilities for which Hedge accounting of interest rate risk shall be implemented. The larger the volume managed the more Hedge functions will be needed.

Business Partner Objects (MDG) are defined as the numbers of all business partner type objects stored in the Master Data Governance system. This is the sum of all supplier objects, as well as any user defined object of type business partner (Vendor, B2B Customer, B2B Contact, Employee, Business Partner, etc.) A user defined object is created using the Master Data Governance framework. A Business Partner is a natural person within an organization, a group of persons within an organization, or an organization itself that has any kind of a business relationship with a company.

Product and Other Data Objects (MDG) are defined as the numbers of all master data objects stored in the Master Data Governance system that are not of type Financials, or Business Partner. This is the sum of all material objects, as well as any user defined object of type things (Product, Article, Contract, Location, Asset, etc). A user defined object is created using the Master Data Governance framework.

Metrics Mainly Used with Line of Business and Industry Portfolios

Accounts are defined as accounts (checking, savings and trading accounts) or transactions (securities transactions (spot + forward deals) and MM / FX transactions). Accounts in the context of the SAP Capital Yield Tax Management are defined as the number of accounts (e.g. checking, savings and trading accounts) that use the CYT component to calculate taxes or identify tax exemptions.

Active Contracts are defined as an agreement between a utility company and a business partner to provide electricity, gas, water, sewage services or waste / cleaning services to the business partner. Thereby a separate contract has to be set up for each service provided (e. g. a utility company provides a business partner with electricity, water and cleaning services, thus three separate contracts have to be set-up). A contract is active if the contract ending date is later or equal to the system date.

Active Partner Organizations are defined as the number of active partner organizations with which a brand owner is doing business.

Active Registered License Plates are defined as registered vehicle License Plates that received an invoice during the last 12 months.

Ad sales value is defined as the total estimated value of all advertising sales generated in SAP Advertising Sales for Media per year.

Annual Public Sector Budget is defined as the total annual public sector budget of an SAP customer (i.e. agency, institution, program or department).

Annual Revenue and Expenses (for SAP Billing for Telecom or SAP Charging and Billing for High Tech) are defined as the Annual Revenue received and Annual Expenses paid (commissions, royalties, revenue share, etc.) based on pricing and sales events processed through the SAP Billing for Telecom or SAP Charging and Billing for High Tech. Revenue and Expenses are both positive values so that expenses do not net against revenue.

Annual Revenue and Expenses (for SAP Charging and Billing for Banking) are defined as the Annual Revenue received and Annual Expenses paid (commissions, royalties, revenue share, etc.) based on pricing and transactions that are actually processed by SAP Service to Cash for Banking e.g. annual revenue and expenses (commissions, royalties, revenue share etc.). Revenue and Expenses are both positive values for this purpose i.e. Expenses are not netted against Revenue numbers.

Average Processed Transactions/Trips/ per day (over 12 months) is defined as the number of transactions/Trips/Event Detail Records/Billing Items per day passed either into Convergent Invoicing or to Event Detail Records Billing. The number of transactions per day is measured as the average number of transactions over the last 12 months.

Backorder is defined as the average number of backorder tasks processed in the backorder cockpit per calendar year.

Banking Commission Recipient is defined as a person who receives payments of any type via ICM related to a bank's business (existing commission contract).

Bank Cards are defined as the number of cards accounts (Credit Cards, Check cards) that will be priced using the Price Optimization solution on an annualized basis

Base & Remote Locations A base location is a central warehouse or distribution center from which the remote locations are supplied with spare parts and materials. Offshore facilities (e.g. platforms) or remote on-shore facilities are examples for remote locations in the Oil & Gas industry. Mines or processing centers are examples for remote locations in the Mining industry.

Big Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the value of the leased asset (financed amount), 5 different ticket sizes are defined for SAP Leasing. Big tickets are e.g. machines for energy management, high-value cars, custom specific machinery, printing machines, home automation (asset value of 100.001 € - 500.000 €).

BOEPD Produced: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced only the produced hydrocarbons are applicable. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD produced in USA: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced in USA only the hydrocarbons produced in USA are applicable. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD produced outside US: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD produced outside US only the hydrocarbons produced globally except the USA. If pricing cannot be based on BOEPD Produced (new ventures with no crude or gas production), the planned or estimated production of the venture shall apply.

BOEPD scheduled/planned: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or

unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below.

For BOEPD scheduled/planned only the scheduled/planned hydrocarbons are applicable.

BOEPD sold: BOEPD means Barrel of Oil Equivalent per Day. It is a unit of measure used in the oil and gas industry that allows aggregating the produced, scheduled or sold quantities of hydrocarbons (whether from conventional or unconventional sources). For example, while gas production is generally measured as a volume per time period such as cubic meter per day, it needs to be converted into its equivalent in barrels of oil in order to determine the total quantity of oil & gas produced in consistent measurements. The conversion to BOEPD is provided in the table below. For BOEPD sold only the sold hydrocarbons are applicable.

Conversion rules: Metric Definitions listed above are based on the metric BOEPD (Barrel of Oil Equivalent per Day). A customer might want to use the packages for different oil products (e.g. crude oil, refined products like gasoline, natural gas, or Liquefied petroleum products - LPG) and/or measures in other unit-of-measures (UoM) than barrels. In order to enable the conversion of those products and UoMs into BOEPD, the following conversion table can be used.

Conversion Factors:

To Convert						
Crude Oil*	tonnes (metric)		kilolitres	barrels	US gallons	tonnes/ year
From	Multiply by					
Tonnes (metric)	1		1.165	7.33	307.86	-
Kilolitres	0.8581		1	6.2898	264.17	-
Barrels	0.1364		0.159	1	42	-
US Gallons	0.00325		0.0038	0.0238	1	-
Barrels/day	-		-	-	-	49.8

*Based on worldwide average gravity.

From				
Products	barrels to tonnes	tonnes to barrels	kilolitres to tonnes	tonnes to kilolitres
	Multiply by			
LPG	0.086	11.6	0.542	1.844
Gasoline	0.118	8.5	0.740	1.351
Kerosene	0.128	7.8	0.806	1.240
Gas oil / diesel	0.133	7.5	0.839	1.192
Fuel oil	0.149	6.7	0.939	1.065

To Convert						
Natural Gas & LNG	billion cubic meters NG	billion cubic feet NG	million tonnes oil equivalent	million tonnes LNG	trillion British thermal units	million barrels oil equivalent
From	Multiply by					
1 billion cubic meters NG	1	35.3	0.90	0.73	36	6.29
1 billion cubic feet NG	0.028	1	0.026	0.021	1.03	0.18
1 million tonnes oil equivalent	1.111	39.2	1	0.805	40.4	7.33

1 million tonnes LNG	1.38	48.7	1.23	1	52.0	8.68
1 trillion British thermal units	0.028	0.98	0.025	0.02	1	0.17
1 million barrels oil equivalent	0.16	5.61	0.14	0.12	5.8	1

Units of Measure

- 1 metric tonne = 2204.62 lb. = 1.1023 short tonnes
- 1 kilolitre = 6.2898 barrels
- 1 kilolitre = 1 cubic meter
- 1 kilocalorie (kcal) = 4.187 kJ = 3.968 Btu
- 1 kilojoules (kJ) = 0.239 kcal = 0.948 Btu
- 1 British thermal unit (Btu) = 0.252 kcal = 1.055 kJ
- 1 kilowatt-hour (kWh) = 860 kcal = 3600 kJ = 3412 Btu

OGSD User: A SAP Oil & Gas Secondary Distribution user is a user working with one or more SAP OGSD transaction codes.

Business Partner

Business Partners for SAP In-House Cash are defined as active business partner master records with financial transactional data within the last 2 years. Active business partners are the relevant subsidiaries, headquarters and external banks. External banks are defined as banks to be used for cash transfer between the In-House Cash Center (Headquarter) and the external bank.

Business Partners for SAP Bank Communication Management are defined as active business partner master records with financial transactional data within the last 2 years. Active business partners are the relevant customers and vendors with financial transactional data within the last 2 years.

Business Partner for SAP Constituent Services for Public Sector is defined as a constituent or a grant applicant.

Business Partner for SAP Payment Processing for Public Sector and SAP Receivables and Payables Management for Public Sector is defined as a constituent, organization or company.

Business Partner for SAP Tax and Revenue Management for Public Sector is defined as a constituent, a taxpayer, a tax agent / tax accountant. Citizens accessing the above packages for a strongly restricted set of tasks (i.e. viewing of documents, change of address, paying of bills and confirmations of delivery and e-filing) do not require a user license.

Cash Control Points are defined as the number of cash control points like bank offices (branches), ATMs, central vaults and central bank vaults modeled and used for planning the currency network demand and supply in APO (Advanced Planning and Optimization).

Claims Cases are defined as the number of new claims created in Claims Management during a one year period.

Classified ads are defined as the number of advertisement versions designed with the SAP ad editor in a one year period.

Commodities Sold is defined as the number of commodities sold (e.g. Copper Concentrate, Molybdenum, Iron Ore, Gold, Coal, Lead) as modeled in SAP ERP.

Consumer Loans is defined as the number of Consumer Loans (Auto Loans that will be priced using the Price Optimization tool, on an annualized basis.

Contract Account for SAP Customer Financial Management for Utilities and SAP Customer Financial Management for Wholesale Utilities is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreements apply.

Contract Account for SAP Customer Financials Management for Telecommunications and SAP Convergent Invoicing for Telecommunications is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreements apply. Pricing is based on maximum number of Contract accounts in master file. Contract Account for SAP Bill-to-Cash Management for Postal and SAP Bill-to-Cash Management for Postal, option for convergent invoicing: A contract account in this context is defined as an account in which posting data for contracts or contract items are processed for which the same collection/payment agreement applies. Pricing is based on the maximum number of contract accounts in the master file. Contract accounts are customer sub-ledgers to accumulate open items and payments. Per customer various accounts may be used.

Corporate Accounts are defined as the number of Corporate Accounts. Corporate Accounts are high value and highly individualized deposits and payment products for the corporate market, often part of hierarchical account structures / groups. Pricing typically on basis of account group not based on single accounts (e.g. cash pooling). Corporate Accounts can be included in a master contract and in this case can be managed by a SAP for Banking application or via an external system.

Corporate Customers are defined as the number of Customer Files, which is the number of business partners (customers, prospects, contacts, etc.); distinguished between Retail Customers, Corporate Customers and Bank Employees (in case of Employee Help Desk); all business partners related to/relevant for the planned usage of the solution (specific department/branch, customer group, etc.) need to be counted. In case of Employee Help Desk (using SAP Solution Manager) this metric needs to be applied for the help desk staff. For employees only reporting problems an Employee User will be charged.

Corporate Loans are defined as highly individualized loans products for the corporate market with a high value.

Customer is defined as the number of active partner records in data base.

Customers Marketed to is calculated as: The number of unique customers who have been part of any active (released) campaign in a given calendar year PLUS the number of unique, active members in loyalty programs in a calendar year. A member is considered active as long as the status of their membership record is "active" in the SAP CRM system, regardless of the number of activities recorded by them.

Dead Weight Tons (DWT) are defined as the amount of weight a ship is carrying or can safely carry. For other modes of transportation, a DWT corresponds to a Ton.

Deposits are defined as the number of deposits accounts (Saving, Money Market, Checking, CDs etc) that will be priced using the price Optimization solution on an annualized basis.

Derivatives are defined as a financial instrument whose value is based on another security.

Device is defined as a Point of Sales Device, or Mobile Device for Mobile POS application.

Employees Scheduled is defined as the maximum number of employees that need to be considered during a scheduling run.

Equipment Items are defined as equipment master records. Each equipment master record which is assigned to Equipment and Tools Management (ETM) is counted for pricing. An equipment master record can be configured as a single item (e.g. a crane), or as a "multi-part equipment" (which could have, e.g., 100 drilling machines in inventory), in both cases only one equipment master record is counted for pricing.

Events are defined as the maximum number of event data records that are processed and stored in database over a one year period.

Finished Items are defined as the total number of additional finished items created or maintained per year by the customer. A finished item represents vehicles and major assemblies, like engines, axles, and transmissions. Warranty claims, which are created by Dealer Business Management DBM service orders, sent or received out of the SAP DBM system and which are not further processed, are covered. In case of extended use of warranty functionalities this exception is not applicable. Pricing of warranty claims (service requests) will follow the pricing of "SAP Aftersales Support for Automotive".

Finished Products are defined as the number of finished items planned in the rapid planning matrix, sequencing table and / or model mix planning.

Full-time Equivalent (FTE) is defined as both employees who are employed by the licensed organization and non-employees who may be engaged on emergency related activities, either on a temporary or permanent basis and who are tasked, deployed or managed by the licensed organization for the purposes of disaster or emergency management.

Full Time Registered Students or Equivalent is defined as:

- Number of Full-time Students: i.e. Student who are registered for a full course load for the current academic year at the institution.
- Number of Equivalent of Full-time Registered Students (for example, a Part Time student could represent a fraction of a Full Time student).

Fundable Assets are defined as Funding Workplace, Mortgage & Leasing.

Funded Assets are defined as all contracts (leasing, loans etc) managed by SAP Funding Management which are currently refinanced. In this context, the effective amount is the sum of all refinancing transactions in status "fixed" or "funded".

Gross written premium (GWP) of an insurance company is defined as the total gross premiums of a fiscal year, insofar processed by the SAP solution.

Gigawatt (GW) is defined as the measurement of installed capacity. Installed capacity is the maximum production capacity of a plant based on the rated capacity. For a power plant both the electrical power as well the thermal power has to be considered. The installed capacity of a power plant is measured in Watt and commonly used as Megawatt (MW) or Gigawatt (GW).

Home Equity Products are defined as the number of home equity loans and lines (such as HELOC, HEL, and FRLO) that will be priced using the price Optimization solution on an annualized basis.

High Value Loans: Number of High Value Loans. High value loans normally have a complex structure and a high level of individualization on customer level in the area of corporate banking. They are possibly included in refinancing via syndications.

Interaction Records are defined as the total number of interaction records created per year by the SAP CRM interaction center.

Joint Venture is defined as a contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise. The maximum number of Joint Ventures per year needs to be considered.

License Revenue is defined as the annual value that a company creates from intellectual property license monetization that is handled within the SAP IPM system. License Revenue includes financial validation for deals which is implemented in SAP IPM but does not result in an incoming payment e.g. barter deal.

Limit Sets are defined as the number of current Limit sets that are used in the system.

Loans Volume in Balance Sheet: Loans Volume in Balance Sheet.

Logistic Locations are defined as plants, distribution centers, customers and suppliers/vendors modeled in SAP APO (Advanced Planning and Optimization) where products or resources are planned.

Location w. Customer Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Customer Collaboration. This includes all customer locations, that e.g. receive goods, and all supplier locations, that e.g. ship goods, or locations that are otherwise necessary to define in the system when running the Customer Collaboration scenarios.

Location w. Outsourced Manufacturing scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Outsourced Manufacturing. This includes all contract manufacturer owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Outsourced Manufacturing scenarios.

Location w. Quality Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Quality Collaboration. This includes all supplier owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Quality Collaboration scenarios.

Location w. Supplier Collaboration scenario is defined as a piece of master data that needs to be defined when implementing and using the system. Location refers to any e.g. plant, warehouse, distribution center involved in the collaboration that is part of the collaboration business processes covered within Supplier Collaboration. This includes all supplier owned and managed locations as well as all customer side locations that e.g. receive goods or are necessary to define in the system when running the Supplier Collaboration scenarios.

Location w. Lean Manufacturing scenario is defined as all partner locations (both customer locations and supplier locations) in the master file of the SNC solution (ICH), as well as all connected JIT/JIS-partners (Just-in-time/Just-in-sequence) in the table JITCU. Each licensed partner location additionally contains 50.000 in-bound JIT/JIS calls per year. In this case the connected Partner locations / partners are counted per plant of the customer to calculate the license fee (e.g. 2 supplier plants of one company shipping to one customer plant is to be counted as 2 partner locations).

Maintenance Object is defined as all objects defined in the MSP (Maintenance and Service Planning) master file (major assemblies such as aircraft, engine).

Marketing Transactions are defined as the number of active campaigns defined within the SAP CRM system plus the number of active Market Development Funds (MDF) program memberships per year. An active MDF program membership is one in which a partner has submitted at least one MDF initiative request in that year.

Medium Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Medium tickets are e.g. trucks, big cars, construction equipment and forklifts (asset value of 50.001 € - 100.000 €)..

Mortgages are defined as the number of mortgage accounts that will be priced using the Price Optimization solution on an annualized basis.

Micro Loans are defined as highly standardized, low value loans, given by a bank or other institution in emerging countries. Micro loans can be offered, often without collateral, to an individual or through group lending.

Micro Saving Accounts are defined as highly standardized deposit services that allow people to store small amounts of money for future use, often without minimum balance requirements. It cannot be a fixed deposit account.

Number of Cases per year are defined as the related information around a specific event that is processed by a case manager. As a related concept a case would be the information maintained in a physical file folder that is now maintained as a record in the SAP system.

Number of Loyalty Members in the SAP CRM system is defined as the actual 12 months average number.

Number of Partner Organizations is defined as the number of partner organizations maintained in the SAP CRM system.

Number of Records is defined as the actual 12 months average number of business partners and marketing prospects maintained in the SAP CRM System.

Number of Sales Employees are defined as the total number of employees (including contract workers) and business partners using the SAP CRM Sales software.

Objects are defined as contracts for financial products that are sold in the retail market and in OTC (over-the-counter) trading (examples: loans, credit facilities), and standardized products that can be bought and sold in an open market (stock exchange) (e.g. Shares, Listed Options, Bonds).

Outpatient Days in Year: One Outpatient Days is counted when one patient has been treated as an outpatient in one calendar day, independently of the quantity of work done on that day and on how the work was documented in the SAP system (in one or more treatment cases, and within cases as one or more visit movements).

Page Views (per year) are defined as the number of times a web page has been successfully served to a user's browser (in 12 month) as recorded by the log files of the web server. Only web pages, served to the SAP server count towards this metric.

P/C/S Cashflow Based: Cash flow based loans except retail loans are defined as:

1. Private Banking / Complex Individual / SME Banking / Mortgages include products with a certain level of personalization on customer level for individuals and small/medium enterprises.
2. Corporate loans are highly individualized loans products for the corporate market and can also have a complex structure.
3. Securities positions

Participant is defined as a member of an Access Control Context, or a user utilizing Business Context Viewer.

Patients treated in Year: Number of patients treated in one calendar year in the institutions supported by the SAP system. Patients are only counted once, no matter how many times they are treated in the hospital within the year.

Persons in treated Population is defined as the number of persons belonging to the population that is treated in the healthcare network to which the Software is applied.

Physical Locations are defined as all mines, concentrators, processing plants, smelters, refineries, distribution centers (stock piles), and ports.

PoD (Point of Delivery) with an advanced active meter assigned. A Point of Delivery (PoD) is the point to which a utility service or other service is supplied. A meter is advanced if it supports bidirectional communication (also known as "smart meter"); a meter is active if the status in the system has been set to "active" (usually done after the meter has been installed to show the meter is ready); a meter is "assigned" to a PoD if it has been built into an installation and this installation has been assigned to the PoD.

Production Tons: Production Tons is defined as the production volume over the period of a year.

Small Plant: is defined as a plant with up to 500 employees: A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

SAP Product Structure Synchronization: Every outsourced manufacturing plant will be considered as small plant. An outsourced manufacturing plant is a physical site owned or operated by a supplier or partner who is part of the engineering to manufacturing scenario supported by Product Structure Synchronization.

Midsized Plant is defined as a plant with 501 up to 5,000 employees. A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

Large Plant is defined as a plant with more than 5,000 employees. A plant is a physical site owned or operated by an enterprise supported by the Software. Employees per plant are all employees and contractors working in the plant.

For SAP Operations Management for Mining: Plants are mines, concentrators, processing plants, smelters, refineries, distribution centers (stockpiles) and ports. Employees include own employees in the operations, contractors, administration and maintenance staff.

PoDs: PoD (Point of Delivery) is the point to which a utility service or other service is supplied.

Portfolio Budget managed with SAP Business Planning for T&L or SAP New Product Development and Introduction for CP is defined as the total annual (calendar or fiscal year) budget of combined "active" portfolio items contained in SAP Business Planning for T&L or SAP New Product Development and Introduction for CP.

Point of Sales (POS) is defined as a physical store or shop-in-shop. Pricing is based on the total number of POS entries in the master file.

POS Transactions: Annual number of sales orders based on one-order documents which are triggered by the SAP CRM system and PoS (Point-of-Sale) transaction line items which are executed in the SAP CRM system.

Private Banking / SME Accounts: Private Banking /SME Accounts are defined as the number of Private Banking / SME Accounts. Deposits account products with a certain level of individualization on customer. Private Banking / SME Accounts can be included in a master contract and in this case can be managed by a SAP for Banking application or via an external system.

Private Banking, Complex Individual, SME Loans: Number of Private, Complex Individual or SME Loans. This business type covers the management of products with a certain level of personalization on customer level for individuals and small/medium enterprises. The product spectrum covers the same type of product as retail banking, but having a higher complexity, higher level of individualization and value.

Public Sector Spend Budget: Annual public sector spend budget as published records of budget year procurement obligations.

R&D Spend Volume: Annual expenditure of company or relevant business units on R&D activities from financial statements, including headcount, equipment and related projects.

Retail Accounts: Number of Retail Accounts. Retail Accounts are standardized deposits products with simple structures and small value for the mass market. Internal accounts are also to be classified as retail accounts. Retail Accounts can be included in a master contract.

Retail Cashflow: Cash flow based retail loans are defined as standardized cash flow based loan products for the mass market segment of individuals. The product spectrum covers loans with simple structures and small values for financing consumer products, auto/cars and voyages.

Retail Customers: Number of Customer Files = number of business partners (customers, prospects, contacts, etc.); distinguished between Retail Customers, Corporate Customers and Bank Employees (in case of Employee Help Desk); all business partners related to/relevant for the planned usage of the solution (specific department/branch, customer group, etc.) need to be counted. In case of Employee Help Desk (using SAP Solution Manager) this metric needs to be applied for the help desk staff. For employees only reporting problems an Employee User must be licensed.

Retail Loans: Number of Retail Loans. Retail loans are standardized loan products for the mass market segment of individuals. The product spectrum normally covers loans with simple structures and small values.

Rights Spend: is defined as the total amount of a company's annual expenditure for the acquisition of intellectual property rights. Rights Spend includes financial validation of deals which are implemented in SAP IPM but do not result in outgoing spent e.g. barter deals.

Sales Employees using SAP sales are defined as the total number of employees (including contract workers) and business partners using the SAP CRM Sales Software.

Sales Orders are defined as the annual number of sales orders based on order documents which are executed in and triggered from SAP CRM.

Sales Value is defined as the total estimated sales value generated in SAP Product Sales and Distribution for Media per year.

Secured Corporate Receivables are defined as highly individualized receivables (loan, credit facility ...) product for the corporate market, managed either by a SAP for Banking application or in an external system, secured by one or more collateral objects.

Secured Micro Loans are defined as a small amount of money loaned to a client by a bank or other institution, offered with a collateral, to an individual or through group lending.

Secured Private Banking, Complex Individual, SME Receivables are defined as receivables (loan, credit, facility) with a high level of individualization on customer level, managed either by a SAP for Banking application or in an external system, secured by one or more collateral objects.

Secured Retail Receivables are defined as standardized receivables (loan, credit, facility, etc.) product for the mass market, managed either by a SAP for Banking application or in an external system, secured by a collateral object.

Service Inquiries are defined as the annual number of service related inquiries; including service process types: complaints, service orders, service incidents, service requests, repair order request for changes, warranty claims & problems.

Service Parts Inventory is defined as the current value of service parts stock inventory at the balance sheet key date, in accordance with the ruling accounting principles.

Service Requests and Warranty Claims are defined as the number of service related inquiries per year, including service process types: complaints, service orders, service incidents, service requests, repair order request for changes, warranty claims & problems plus the number of warranty claims (processed within ERP).

Shipment is defined as a physical shipment of cargo from origin to destination. Shipments are consolidated shipments as represented in the software in a one year period.

Logistic Service Providers: Shipments are consolidated shipments (orders/bookings/jobs or item lines) as represented in the system in a one year period. The industry terms "bill of lading" (road, air or sea) also refers to a shipment within the SAP system.

Mill Products: Shipments are consolidated shipments as represented in the system in a one year period. In the mill products industry, shipments correspond to deliveries, shipments, containers, trucks or railcars.

Consumer Products: Shipments are consolidated shipments as represented in the system in a one year period. In the consumer products industry, shipments correspond to deliveries, orders or loads (=vehicles).

Postal: Shipments are consolidated shipments as represented in the system in a one year period. Deliveries are always considered as freight units. Additional to the deliveries, also containers, handling units, orders, vehicles or packets can be freight units.

Small Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Small tickets are e.g. small cars, medical devices, IT equipment (asset value of 5.001 € - 50.000 €).

Spare Parts Material Master Records are defined as the current value of service parts stock inventory at the balance sheet key date, in accordance with the ruling accounting principles.

Spend Volume is defined as the total amount of a company's annual expenditure for the procurement of all direct and indirect goods and services.

When licensing SAP BusinessObjects Electronic Invoicing for Brazil (NFE-Inbound), only Spend Volume in Brazil is to be considered.

Subscriptions are defined as an agreement between the customer and the provider for the access to or use of a service provided under certain terms and conditions. One customer or subscriber could have one or many different subscriptions for different or similar services.

In a bundle, every included main service subscription counts as 1 subscription (e.g. in a Triple Play bundle with Mobile, Internet Broadband and IPTV services, 3 subscriptions would be charged)

Syndicated Loans: Syndicated Loans on a wholesale basis, i.e. big tickets (e.g. for infrastructure projects).

Telecom Orders are defined as the total annual number of telecom orders and subscriptions (for individual service products or bundles), change processes (e.g. tariff or subscription changes) and cancellations.

Titles are defined as the Number of titles actively managed during the last three years period, as reported by the publisher.

Tonnage Produced: maximum tonnage produced on one day.

Trips/vehicle related services (per day) are defined as the total number of transactions per day processed by the convergent charging system, which are defined as pricing outputs (where one input as Event Detail Record/Billable item can generate one or several pricing outputs). In case several parties participate to the Trip/vehicle related service, the additional transactions triggered by the SAP Convergent Charging engine for settlement purposes need to be counted in addition to the original transactions.

Transaction per Day: Transactions per day are defined as the total number of transactions per day processed by the convergent charging system, which are defined as pricing outputs (where one input can generate one or several pricing outputs)

The amount of Transactions per Day licensed must be sufficiently large to accommodate for peak load days, i.e. on any given day of the year the actual Transactions per Day volume of pricing outputs must be less than or equal to the licensed Transactions per Day volume.

Prepaid Telecommunications: Pricing or charging outputs for accounts that have paid or were paid in advance for the services consumed.

Postpaid Telecommunications: Pricing or charging outputs for accounts that will pay or be paid for the services consumed after invoice or payment statement generation.

Travel Claims are defined as any Trip or Expense Report that is entered into SAP TM and submitted for claim.

Vehicles: Number of finished items ordered in one year. Finished items are vehicles and major assemblies like engines, axles, and transmissions.

Very Big Tickets are defined as the number of objects (assets) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Very big tickets are e.g. ships, power stations, oil platforms, aircrafts, complex IT projects (asset value of > 500.000 €).

Very Small Tickets: Very small Tickets are defined as the number of objects (assets or services without asset) financed in leasing contracts in one calendar year. Based on the financed amount, 5 different ticket sizes are defined for SAP Leasing. Very small tickets are e.g. PC, laptops, copy machines, printers (asset value of 0 € - 5.000 €).

Weighted Size of Organization in FTE: The weighted size of the organization reflects the number of Full Time Equivalents (FTEs) employed in the organization – including military and civilian personnel & reserve.

Warehouse is defined as a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products).

Small Warehouse is defined as a Warehouse with up to 5,000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Midsized Warehouse is defined as a Warehouse with 5,001 up to 35,000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Large Warehouse is defined as a Warehouse with more than 35,000 delivery items per day. A Warehouse is a building, room, or area within a factory or place of business that is used for storing merchandise, raw materials, or parts (semi-finished products). For purposes of determining the size of warehouse, a delivery item is the individual inbound or outbound delivery line item of the actual delivery for a goods receipt or a goods issue, which may consist of material, quantity, location specification, put-away or picking date, and batch.

Web Channel User is defined as employees of external Business Partners who are solely authorized to perform Business to Business sales and/or service management and/or user maintenance activities supported by the web channel software.

Metrics Mainly Used with SAP NetWeaver

CPU: Every CPU that runs at least parts of the licensed software is considered in its entirety.

When counting physical CPUs, each core of a physical CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted.

When counting virtual CPUs, each core of a virtual CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. If the software will run in a pure virtual environment, physical CPUs will not be considered.

CPU metric value calculation: For each CPU, the first processor core shall be multiplied by 1, and each incremental processor core is multiplied by 0.5. The sum for all CPUs shall then be rounded up to the next whole number.

Adapter Type: Backend Applications Adapters need to be licensed per adapter usage type (i.e connectivity to Oracle, Siebel, etc.) irrespective of the number of installations or connected systems; no matter whether the adapter is used together with an SAP solution requiring SAP PI or used in a custom developed scenario.

GB per Month is the overall message volume expressed in Gigabytes (GB) per month, which is processed by the respective SAP Application.

Installation: An installation is defined as an instance of the software installed at a designated device.

Blade memory is defined as memory of the blade.

External Community Members are either non-employees of organizations such as schools, universities, charities or governmental entities or business third parties including, but not limited to, customers, employees of distributors and suppliers who are licensed to access solely the SAP Enterprise Portal software. External Community Members are not allowed to access other SAP software and their respective components. Business third party employees participating in collaborative business scenarios that require access beyond SAP Enterprise Portal software need to be licensed as Named Users for the respective SAP software.

Business Partner Objects are defined as the numbers of all business partner type objects stored in the Master Data Management system. This is the sum of all supplier objects, as well as any user defined object of type business partner (Vendor, B2B Customer, B2B Contact, Employee, Business Partner, etc.) User defined objects are created using the MDM tool for management within the MDM repository. A Business Partner is a natural person within an organization, a group of persons within an organization, or an organization itself that has any kind of a business relationship with a company.

Consumer Objects are defined as the total numbers of all consumer type objects stored in the Master Data Management system. This is the sum of all B2C Customer, B2C Contact, Citizen objects, plus the total number of any additional Consumer type user defined object. User defined objects are created using the MDM tool for management within the MDM repository. A consumer is a natural person or a group of persons (e.g. household) that has any kind of business relationship with a company.

Master Data Objects are defined as the total number of all master data objects stored in the SAP NetWeaver Master Data Management system, plus the total number of all master data objects stored in the SAP Master Data Governance System.

Product and Other Data Objects are defined as the numbers of all master data objects stored in the Master Data Management system that are not of type Financials, or Business Partner. This is the sum of all material objects, as well as any user defined object of type things (Product, Article, Contract, Location, Asset, etc). User defined objects are created using the MDM tool for management within the MDM repository.

Product in Data Cache: The price is based on the number of products in the Product Data Cache

Internal User Identifiers are defined as the total number of individuals working inside the Ordering Activities organization (employee, contract worker and outsourcer), whose credentials and/or user information is managed by the functionality of the licensed Package.

External User Identifiers are defined as the total number of individuals being external to the Ordering Activities organization (other than employee, contract worker and outsourcer), whose credentials and/or user information is managed by the functionality of the licensed Package.

Records are defined as the total number of leading SAP business objects and/or the number of cases in SAP NetWeaver Folders Management. Archived Records (records attached to archived business objects) are not counted. A leading object is the object the record refers to.

When SAP NetWeaver Folders Management is used to manage employee files, employees managed in the SAP HCM system are the leading object to be counted. When it is used for billing, creditors and debtors are the leading objects to be counted.

When it is used in SAP Real Estate Management, real estate objects (including but not limited to real estate contracts, business entities, buildings, pieces of land, rental objects architectural objects, and parcels of land) are the leading objects to be counted.

When it is used to manage changes of equipment by utilizing cases, the number of change requests is counted.

Port is defined as a communication channel.

Recipients are defined as the number of individuals receiving reports from the licensed software.

Decommissioned Systems are defined as the number of systems that are retired using SAP NetWeaver Information Lifecycle Management.

Service Calls are defined as the total number of HTTP request per calendar year which are processed by SAP NetWeaver Gateway Server. Metadata requests and requests from SAP Software that contains SAP NetWeaver Gateway runtime software are not counted.

LVM Instances are defined as the primary application server used for central application services of the managed SAP application, including the enqueue and message services (e.g. the central instance), any SAP Web AS instances associated with the managed SAP application that is not the central instance (e.g. dialog instances), the primary database of the managed SAP application (e.g. database instance), or any occurrences of TREX or LiveCache associated with the managed SAP application.

For the copy/clone/refresh option, only the primary system database of the source systems are counted. In cases where multiple databases are configured for the managed systems (e.g. shadow DB, DB cluster, LiveCache, etc.), then only one database is counted, regardless of which ones or how many are configured.

For third-party (e.g. non-SAP applications) and custom developed applications the entire application is defined as a single LVM instance in SAP NetWeaver Landscape Virtualization Management, regardless of the software architecture for that application.

Metrics Mainly Used with SAP HANA

Gigabytes of Memory are defined as the total amount of memory that may be used by the HANA Software, as measured in gigabytes. Each unit of HANA licensed contains 64 Gigabyte memory.

Metrics Mainly Used with General Supplementary Products

Customer Interactions are defined as the number of agent-assisted or self-service customer interactions with one or more recommendations made by the RTOM engine per annum. RTOM recommendations might be cross-sell, up-sell or next best action recommendation.

Installations for Enterprise Project Connection are defined as the number of installations to 3rd party products (e.g. the number of 3rd party project system installations that will be connected to SAP systems)

Portfolio Budget managed with SAP Portfolio and Project Management (through Resource and Portfolio Management capabilities) is defined as the total annual (calendar or fiscal year) budget of combined "active" portfolio items contained in SAP Portfolio and Project Management (through Resource and Portfolio Management capabilities).

Contracts are defined as the total number of contracts the company plans to address within the application. The total number of contracts is the number of contracts used in all functions including procurement, sales, legal, partner management, HR, real estate, and all other functions of the organization.

Work-Center is designed as a "Kanban Work-Center" or a "Pacemaker Work-Center". A Work center can be "single" resource or a "group of resources" where a single schedule is created for the line.

Auto-ID Site is defined as a physical location identified by a street address where device(s) are capturing and transmitting data, connected with Auto-ID Enterprise and/or Auto ID Infrastructure software. Multiple separate physical structures with no common walls and which have the same street address will be considered separate sites.

Database Size is defined as the database size of the productive system and is calculated individually for each system that means for each ERP, BI and CRM system.

For SAP NetWeaver Information Lifecycle Management Database Size is defined as the total database size of productive SAP system where SAP NetWeaver ILM Retention Management is run.

Resources are defined as uniquely identified users or pieces of equipment, including machines, tools and scanners that directly or indirectly feed data to or accesses data from the SAP Manufacturing Execution System.

Recommendations are defined as the total number of recommendations created by the RTOM system in a calendar year.

Employees (SAP MII) are defined as the total number of employees in those plants and supporting locations using SAP MII, and where employees are workers, mobile workers, contractors or partners associated with those plants/locations.

BCM multi-channel User is defined as the user (agent and/or supervisor) who works in a contact center environment and handles incoming contacts through multiple communication channels (voice, email and chat) and/or handles outbound campaign calls and/or uses supervisor tools to supervise contact center agents.

BCM voice-only User is defined as the user (agent) who works in a contact center environment and handles incoming contacts through voice channel only or handles outbound campaign calls only.

BCM personal-telephony User is defined as the user who uses the system for office telephony only without access to contact center capabilities.

BCM reporting User is defined as the total number of users (multi-channel user, voice-only user and personal telephony user) in the SAP Business Communications Management customer system that are collected for communication statistics.

BCM Rapid Deployment Edition User is defined as the user (agent and/or supervisor) who works in a contact center environment and handles contacts through voice channel only and views predefined communication statistics within a predefined SAP Business Communications Management Rapid Deployment customer system.

Defined Business Transactions are defined as the annual number of service related transactions; including service process types: service incidents, service requests, problems, request for changes and knowledge article.

Accumulated Database Size is defined as the database size of all productive SAP systems where the customer will use SAP Landscape Transformation.

Items per configuration is defined as the amount of line items in the CRM quotation that have been generated using the solution.

Tons per year for SAP Commodity Sales & Procurement for iron ore, steel and coal are defined as the maximum of the sales or purchasing volume for the following commodities: Iron Ore, steel, coal.

Barrels of Oil Equivalent per day ("BOEPD") for SAP Commodity Sales & Procurement for oil, oil equivalent and gas are defined as the maximum of the sales or purchasing volume for the following commodities: crude oil, natural gas, Nat Gas Liquids NGL, ethanol, gasoline, jet fuel / kerosene, heating oil.

Tons per year for SAP Commodity Sales & Procurement for base metals, cereals and sugar are defined as the maximum of the sales or purchasing volume for the following commodities: tungsten, molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium, rhenium, thallium, uranium, pulp, paper, wheat, corn, rice, sugarcane.

Tons per year for SAP Commodity Sales & Procurement for alu, grains and other major crop are defined as the maximum of the sales or purchasing volume for the following commodities: Aluminum, oats, barley, rye, potatoes, cassava, soybeans.

Tons per year for SAP Commodity Sales & Procurement for non-ferrous base metals are defined as the maximum of the sales or purchasing volume for the following commodities: copper, lead, zinc.

Tons per year for SAP Commodity Sales & Procurement for coffee, oilseeds, meat, dairy are defined as the maximum of the sales or purchasing volume for the following commodities: coffee, rapeseed, canola, sunflower seed, peanuts, oils & fats, oil meal, live cattle, feeder cattle, lean hogs, pork bellies, CME milk, butter, fruits & vegetables, cotton, jute, orange juice, apple juice concentrate, sugar, lumber, tobacco, rubber.

Tons per year for SAP Commodity Sales & Procurement for tin, nickel, cocoa and tea are defined as the maximum of the sales or purchasing volume for the following commodities: tin, nickel, cocoa, tea.

Ounces per year for SAP Commodity Sales & Procurement for silver are defined as the maximum of the sales or purchasing volume for the following commodities: Silver.

Ounces per year for SAP Commodity Sales & Procurement for precious metals except silver are defined as the maximum of the sales or purchasing volume for the following commodities: gold, platinum, palladium, ruthenium, rhodium, osmium, iridium.

Metrics Mainly Used with Third Party Supplementary Products

Process servers are defined as each server (real or virtual) where scheduled jobs are to be managed.. A process server is required for every single connected application, server or operating system (OS) instance (virtual or physical) with a unique identification on which processes are executed that need to be monitored, managed and controlled. For each process server purchased the customer is provided with 1 production and 3 non-production environments (i.e. 1 for fail-over for the production instance, 1 for development and 1 for test).

Invoice is defined as each item that flow thru the cockpit for reconciliation per year.

Users and Forms Users are defined as employees accessing Interactive Forms based on Adobe - Enable the Enterprise. Bundles of 40 forms are defined as 40 modified or created Interactive Forms being accessed.

Professional Users are defined as total number of all SAP Professional and SAP Limited Professional named users of the customer irrespectively whether they actually accessing this program or not.

Scenarios are defined as scenarios being used in SAP Process Performance Management by Software AG based on SAP Solution Maps. Details on SAP Solution Maps can be found in sap.com: <http://www.sap.com/solutions/businessmaps/index.epx>

Trucks are defined as vehicles with order management handled in the application.

Monitored users are defined as employees who will be monitored and are authorized to use the reporting consol.

Managed Resources are defined as the number of Client employees, delivery vehicles and/or any other unique resources managed by SAP Workforce Scheduling & Optimization by ClickSoftware.

A Scheduled Public Officer is defined as any employee who is involved in public administration, public security or works for a government agency and which will be planned for the work rosters and/or scheduled for service activities.

Virtual User is defined as each user that is simulated in the software to test the load on the SAP system.

Portal User is defined as the estimated number of licensed users with access to a particular deployment of the SAP Portal, including SAP Professional Users, ESS/MSS Users, and External Community Members.

Loadrunner Controller is defined as the central point for load test design and load test execution.

Loadrunner Enterprise Controller is defined as the central point for load test design and execution, and contains a component that provides for web access and scheduling capabilities.

Testers are defined as employees working with SAP Quality Center by HP products. For use with SAP Test Acceleration and Optimization tester are defined as employees using SAP TAO and testing SAP applications enterprise-wide.

Total Assets are defined as the sum of current and long-term assets owned by the bank.

Message volume (MB) / month / installation is defined as data volume in MB of conversions performed per month and per installation.

Mobile user is defined as each user accessing data from DB2 Everyplace Database.

Devices are defined as all devices accessing data from Sybase SQL Anywhere Database.

VIP User is defined as each user accessing SAP Visual Information for Plants by NRX.

SAP Application Value (SAV) is defined as the sum of list prices for Named Users, External Community Members, (pan-industry and industry specific) Software Engines and Supplementary Products, excluding those items identified in the list of prices and conditions that do not contribute to the SAP Application Value.

Contract Price is defined as the net value of the license contract. Contract Price for partners refers to Partner Buy Price depending on the support delivery model.

Service request is defined as the annual number of service related inquiries, including service process types: cases, complaints, warranty claims and service orders.

Connected System is defined as the total number of productive SAP Solution Manager systems connected to the productive systems of SAP Quality Center by HP, Central Process Scheduling by Redwood, or SAP Productivity Pak by RWD.

Total annual budget is defined as total annual public sector budget of SAP customer (i.e. agency, institution, program or department) based on current budget period.

A **resource contributing to usage volume** is defined as a resource planned during a given calendar year using SAP Multiresource Scheduling or SAP Multiresource Scheduling with Optimizer. A resource is a person (such as a technician, service engineer, or repair engineer), or a production resource (such as a tool, instrument, machine, or room).

Payment item is defined as a single Payment transaction within a payment order. A payment order can have one ordering party item and n recipient party items.

Licensed User is defined an individual user licensed as one of the Named User types defined in the price list.

Employee Files are defined as employee (employees and former employees) folders containing their electronic files.

Profile is defined as an individually produced business mapping document counted for each connected business partner. Each profile is qualified by SAP, example: purchase order inbound, purchase order confirmation outbound, purchase order confirmation inbound, purchase order change and cancelation.

Net Property Plant & Equipment is defined as value of the total property, plant and equipment as disclosed in the balance sheet insofar as processed by the SAP solution.

Cost of Goods Sold is defined as all expenses directly associated with the production of goods or services the company sells (such as material, labor, overhead, and depreciation). It does not include SG&A or R&D. If COGS is unknown then COPGS shall be equal to 70% of total company revenue.

An output transaction means a single instance of a business document that is created, processed, printed or manipulated in some way by the products (e.g. letter, email, PDF, fax, SMS).

Asset retirement obligation cost estimations is defined as the volume of the cost estimations which are handled in the solution. The cost estimation volume is equal to the total of the settlement values (expected costs at the estimated retirement date) of all cost estimation items of the cost estimation plans of all Asset Retirement Obligations, which are handled by SAP Asset Retirement Obligation Management. If the customer is using more than one accounting principle, the cost estimation volume is calculated separately for every accounting principle. The maximum of these values will be used for pricing. The cost estimation volume is determined based on the volume, which is valid at the fiscal year end date. Only asset retirement obligations, which are active at this date, will be considered.

Invoices (outbound) is defined as the number of invoices sent via e-invoicing.

Invoices (inbound) is defined as the number of invoices received via e-invoicing.

Author is defined as someone who can create/edit a visualization using SAP Application Visualization by iRise, the add-on for SRM (if applicable), and add-on for general SAP solutions (if applicable)

Database Objects is a collection of intrinsic and/or customer-defined properties that is defined by a Palantir dynamic ontology and stored in or accessible by the Palantir system.

Metrics mainly used with business intelligence (BI), enterprise information management (EIM) solutions and address directories

Named user License (NUL). Users are also known as Named User License (NUL). Each individual end user must be specifically identified as the sole holder of a NUL. The sharing of the NUL by more than one individual is expressly prohibited. In addition, NUL(s) may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the licensed Software.

There is no license limit on how many individuals are working concurrently with the Software. There is no license limit on number of processors or servers used. Named Users are identified at logon and do not consume a Concurrent Session license. Concurrent Session licenses and NULs can be purchased in combination for a Deployment, but cannot be shared among or between Deployments.

This metric does not replace the overall SAP Named User licensing requirement.

Concurrent Access License or CALs (Important note: this pricing metric is only available through BusinessObjects Value Added Resellers) refers to the aggregate number of end users accessing the licensed Software at any one time. The number of users accessing the licensing Software may not exceed the number of CALs the customer has obtained. CAL(s) are assigned to a particular Deployment, and may not be shared among different Deployments. When using Concurrent Access licenses, customer may not utilize a program or system to cache or queue report requests.

Annual Subscription is defined as a periodic recurring fee that is payable every calendar or fiscal year for the right to use software or services during that calendar or fiscal year. This fee is payable each calendar or fiscal year whether or not the software or service has been used during that year.

Concurrent Session refers to the aggregate number of sessions accessing the licensed Software at any one time. A session refers to the time between logon and logoff or time out where a unique user, application or platform accesses the licensed Software. The number of sessions accessing each licensed Software product may not exceed the Licensed Level for the number of Concurrent Sessions for such licensed Software product. All Concurrent Session licenses for a given Software product must be assigned to the same, single Deployment, and may not be assigned amongst different Deployments. When Using Software licensed by number of Concurrent Session licenses, Ordering Activity may not utilize any program or system to cache or queue report requests.

CPU. Every CPU that runs at least parts of the licensed software is considered in its entirety. When counting physical CPUs, each core of a physical CPU that runs at least parts of the licensed Software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. When counting virtual CPUs, each core of a virtual CPU that runs at least parts of the licensed Software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. If the Software will run in a pure virtual environment, physical CPUs will not be considered. CPU metric value calculation: For each CPU, the first processor core shall be multiplied by 1, and each incremental processor core is multiplied by 0.5. The sum for all CPUs shall then be rounded up to the next whole number

Data Migration Project is defined as a project with a single identified target system where data can be migrated to or from multiple source systems. The package has term limit of 18 months with an initial 6 month maintenance and option to renew maintenance one time for 12 months. Clock starts when the contract is signed.

Deployment is defined as a single installation of no more than one of the following Software modules or files within the BA&T SAP BusinessObjects Business Intelligence Platform Software (for which Ordering Activity must obtain a license): Repository, Security Domain, Central Management Server ("CMS"), CMS Cluster, or Crystal Reports Runtime Engine.

Instance is defined as a single unique connection to a specified application or technology type.

Package Fee is defined as a flat fee to license the software.

Server is defined as a physical computer, case, box or blade that houses the CPUs running the software product. Multiple virtual machines on the same physical box are allowed and do not require additional licenses.

Type License. When Software or Third Party Software is licensed by Type, the Software or Third Party Software may only be used in connection with an unlimited number of connections to a single, specified database or application.

Metrics mainly used with governance, risk, and compliance (GRC) and enterprise performance management (EPM) solutions

Country Exporting is defined as the countries where electronic communications with local customs authorities needs to be established.

When licensing by 'country exporting from': Please note that number of countries where electronic communications is available is currently limited. Please check availability before licensing for a particular country.

Employee is defined as the total number of employees (including contract workers) employed by the company or employed by the legal entity that is licensing the functionality of the package.

When licensing by Employees for EPM or GRC packages: If the licensed package will be restricted to a division, affiliate or subsidiary of the Ordering Activity, it is possible to use the total number of employees employed by such division, affiliate or subsidiary of the Ordering Activity whose activities are being managed by the licensed software.

One Time Fee is defined as a flat fee to license the software.

Monitored Users are defined as employees, contract workers or other individuals whose credentials, permissions, privileges and/or other user information will be monitored, evaluated or managed by the Software

Revenue is defined as income that a company receives from its normal business activities and other revenue from interest, dividends, royalties or other sources.

When licensing by Revenue for SAP BusinessObjects Electronic Invoicing for Brazil (NFE), the Revenue considered is limited to the revenue generated by the company or legal entity located in Brazil.

Recipients are defined as the number of individuals receiving reports from the licensed software.

Metrics mainly used with SAP BusinessObjects solutions for SME

Filing: Each Filing permits one Legal Entity to Use the Software to submit an unlimited number of applications, filings, statements, returns, notices, reports, exemption or such other documents to a single Governmental Entity in each calendar year. Submission of

any filing by more than one Legal Entity to the same Governmental Entity or by one Legal Entity to multiple Governmental Entities shall require additional Filing licenses.

“Government Entity” means any federal, state, foreign governmental entity, securities authorities, agency, commission, other regulatory, self-regulatory or enforcement authorities or any courts, administrative agencies or commissions or other governmental authorities or instrumentalities.

“Legal Entity” means any individual, person, partnership, joint venture, corporation, company or other form of enterprise, domestic or foreign.

Flat Fee/Fixed Fee is defined as a fixed package license fee for the software.

Rapid Mart (RM) Module is defined as a separate unit of software that may include a specific subject-oriented repository of data and/or content designed to answer specific questions for a specific set of users. E.g. Sales, Inventory, Purchasing, General Ledger, HR etc.

Available Edge Rapid Marts (RM) Modules: SAP (11 modules available); Oracle E-Business Suite (11 modules available); PeopleSoft (5 modules available); Siebel (3 modules available).

Metrics mainly used with Sybase Products

Application Connection is a single licensed SUP User or SUP & Afaria HDM User or SUP for Consumers User accessing a single Application. “Application” is a set of related functionality developed by an SUP Developer User Using SUP or a single mobile application (limited to those mobile applications that are (i) separately licensed from SAP by Ordering Activity and (ii) prescribed for Use with SUP, if any).

Laptop Device is defined as laptop computer.

Limited Runtime Option Productivity Apps are those licensed SAP Enterprise Integration for SAP Mobile Applications or SAP Partner Certified Mobile Apps stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option-for-productivity-apps/index.epx>

Limited Runtime Option Apps are those licensed SAP Enterprise Integration for SAP Mobile Applications or SAP Partner Certified Mobile Apps stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option/index.epx>

Terabyte (TB) is defined as the amount of data stored in terabytes in the main database of Sybase IQ Server in whole numbers (fractions must be rounded up). If VLDB option is licensed, it must be licensed to match the size of the entire main database of the Sybase IQ Server

Exhibit 3 - Package Restrictions

1. SAP Business Suite and Enterprise Foundation

- 1.1 **SAP Business Suite.** SAP Business Suite when delivered with embedded analytics capabilities includes SAP provided preconfigured business content, including, but not limited to, preconfigured SAP Crystal Reports and SAP BusinessObjects Xcelsius Enterprise Dashboards that can display data from queries. In order to view, use or modify such preconfigured embedded analytics capabilities shipped with the SAP Business Suite (“Embedded Analytics”), Ordering Activity needs to license the appropriate SAP Business Objects software as well as the required SAP Named User licenses. Ordering Activity may additionally download, install and use the Crystal Reports Viewer for SAP Business Suite Applications to display lists from ALV as SAP Crystal Reports at no added cost under the terms and conditions applicable to SAP Business Suite applications.
- 1.2 **Enterprise Foundation.** Unlike other Package licenses the Enterprise Foundation package comes with 5 (five) SAP Application Professional Users in addition to the use rights for the scope of Enterprise Foundation capabilities. Any additionally required Named Users need to be licensed separately. The license for data destruction in Human Capital Management is included in the ERP license.
- 1.3 **Enhancement Packages for Certain SAP Software.** The enhancement packages for certain SAP Software may provide new and improved software functionality. Each SAP enhancement package contains business functions that Ordering Activity can activate separately and independently from each other. The standard licensing model for SAP also applies to business functions shipped as part of SAP enhancement packages. To activate business functions, additional licenses may be required. In each of these cases, the respective license needs to be in place prior to activating and Using the business function. Upon request, SAP account executives can provide additional information about the required licenses.

2. Enterprise Extensions

Enterprise Extension Packages require licensing of the Enterprise Foundation Package.

- 2.1 **SAP Payroll Processing.** Payroll Processing for the USA requires partner software that is subject to additional license fees.

- 2.2 BSI U.S. Payroll Tax Processing. BSI requires licensing of SAP Payroll Processing. Special maintenance agreement required.
- 2.3 SAP Treasury and Risk Management and SAP Treasury and Risk Management, Public Sector. Use of SAP Treasury and Risk Management is limited to a maximum of a hundred (100) active, investment-related security classes in the securities area*. In case a larger number of security classes are required, the Industry Package SAP Investment Management for Insurance and/ or SAP Investment Controlling for Insurance have to be licensed.
- * In the SAP system each security (e.g. stocks) is a class. The class data includes all the structure characteristics of a security. Since the creation of transactions and the management of positions in the transaction manager are based on product types, each class needs to be assigned to a product type.
- 2.4 SAP Environment, Health and Safety (EHS) Management; SAP EHS Management, health and safety; SAP EHS Management, environmental compliance; SAP EHS Management, product safety; SAP EHS Management, product and REACH compliance. The products listed above provide a framework to support customers in achieving compliance with certain environment, health and safety regulatory requirements. This framework needs to be adjusted, configured and/or expanded by the Ordering Activity to meet the specific requirements of the customer. SAP does not warrant or guarantee regulatory or other compliance. Ordering Activity has the obligation to implement those products in a manner such that regulatory or other compliance requirements are adequately reflected.
- 2.5 SAP Environment, Health and Safety (EHS) Management; SAP EHS Management, health and safety. SAP Named Users are not required for employees, contractors, and business partner users that interact with the incident management functionality of SAP EHS Management solely to enter data for initial incident reporting and to provide data for incident investigations. Such data entry may occur asynchronously (off-line) via the Adobe Interactive Form tool, synchronously (on-line) by direct interaction with the SAP system, or via mobile devices. This exception applies only to incident management data entry use, and does not apply to any other uses of the incident management functionality or any other functionality of SAP EHS Management including incident processing, investigation, and performance and regulatory reporting.
- 2.6 SAP Incentive and Commission Management. The list price comprises the management of the basic elements commission recipients and contracts, as well as the basic processes valuation, remuneration, closing, and settlement. The option price comprises further functionalities such as manual commission posting, bonus calculation, and target agreement management. Excluded is the functionalities portfolio assignment, credentialing, and risk reduction strategies (actual commissioning and liability management). In case such functionalities are required the corresponding industry package has to be licensed.
- 2.7 SAP Credit Management, SAP Biller Direct, SAP Collections and Dispute Management. SAP Named Users are required for employees of Ordering Activity and employees of third parties acting as agents on behalf of Ordering Activity who are using the applications listed above. SAP Named Users are not required for employees of Business Partners who are accessing the software on behalf of such Business Partner.

3. Industry Packages

- 3.1 SAP Upstream Contracts Management for Oil & Gas. Functional support for any local or legal requirements for any of these solution components is not covered by the standard maintenance agreement. A separate service agreement must be concluded for this purpose.
- 3.2 SAP Secondary Distribution for Oil & Gas. The license for "SAP Secondary Distribution for Oil & Gas" includes a license of the industry package "SAP Downstream Sales & Logistics for Oil & Gas" for up to 25,000 BOEPD. For these 25,000 BOEPD, customers need to license at least 4 "SAP Secondary Distribution for Oil & Gas" users per 1000 BOEPD (e.g. 10 000 sold BOEPD -> licensing of 40 users minimum). Ordering Activitys selling more than 25,000 BOEPD need to license the industry package "SAP Downstream Sales & Logistics for Oil & Gas" separately for the sales volumes above 25,000 BOEPD. Refined product volumes are considered as equal to crude oil volumes, e.g. one barrel of diesel equals one barrel of crude oil.
- 3.3 SAP Military Data Exchange. SAP Military Data Exchange is not available for all countries, for details please see contact information at www.sap.com/defense-security
- 3.4 SAP Customer Financial Information Management for Insurance. For the use within the SAP solutions Policy Management FS-PM, Claims Management FS-CM, Billing and Payment FS-CD, Incentive Management FS-ICM a separate purchase is not required.
- 3.5 SAP Social Services Management for Public Sector and SAP Constituent Services for Public Sector. In Public Sector scenarios, constituents are covered by the respective Package license and do not need to be licensed as a SAP Named User.
- 3.6 SAP Tax and Revenue Management for Public Sector. External users accessing the above packages for a strongly restricted set of tasks (include the viewing of documents, change of address, paying of bills and confirmations of delivery and e-filing) do not require a SAP Named User.

- 3.7 SAP Electronic Toll Collection for Public Sector, SAP ERP Billing. External users accessing the above packages for a strongly restricted set of tasks do not require a user license. These tasks are the viewing of documents, change of address (creation and change of a contract account), paying of bills (e.g. pre-paid top-up process) and confirmations of delivery.
- 3.8 SAP Distribution Monitoring for Postal. External users accessing SAP Distribution Management Postal for the strongly restricted set of tasks of viewing of the status / delivery and confirmations of event messages in Event Management via the Web interface do not require a SAP Named User license.
- 3.9 SAP Convergent Charging for post-paid Telecommunications; SAP Convergent Charging for pre-paid Telecommunications; SAP Charging and Billing for High Tech; SAP Convergent Charging, version for Toll Collection; SAP Billing for TC; SAP Charging and Billing for Banking; SAP Convergent Charging for TC. Convergent Charging and Billing Software included in the referenced products may not be Used for, or in support of, billing or revenue share calculation for pre-paid telecommunications products, services or systems in the Restricted Countries or to remotely support prepaid telecommunication systems in the Restricted Countries (collectively, the “Prohibited Pre-Paid Telecom Usage”). All warranties, including without limitation any warranties of non-infringement of intellectual property rights and any associated indemnities are expressly excluded to the fullest extent provided by applicable law in connection with any Prohibited Pre-Paid Telecom Usage. The Restricted Countries are Australia, Brazil, Canada, China, Korea, Israel, Japan and Mexico and the United States. “Telecommunication” as used herein refers to products, services, or systems that provide mobile, Voice Over IP (VOIP), or other types of telephone calls..

4. SAP NetWeaver

Adapters are only available with a SAP NetWeaver PI license and are licensed for a defined release of a backend system or protocol. Maintenance for adapters covers the support of connectivity to a backend system or compliance to a protocol specification at that given release at the time of licensing. It is within SAP’s sole discretion to extend the use rights of an adapter (either partly or fully) to a higher release of the respective backend system or protocol. This applies to change of version of protocols as well.

- 4.1 SAP NetWeaver Process Integration (PI). SAP NetWeaver Process Integration may be used by Ordering Activity to integrate Ordering Activity’s SAP applications as part of an application-specific runtime license of SAP NetWeaver Foundation. For any other use (e.g. integration into 3rd party applications or non-SAP Applications), SAP NetWeaver Process Integration needs to be licensed separately.
- 4.2 SAP NetWeaver Process Integration (PI) Adapters. The adapters listed here are available free of charge with the SAP NetWeaver PI or SAP Process Orchestration license: CICS Adapter by iWay, TMS/IMS Adapter by iWay, JD EDWARDS ONE WORLD XE Adapter by iWay, ORACLE Adapter by iWay, PeopleSoft Adapter by iWay, Siebel Adapter by iWay, JDE World Adapter by iWay, SAP NetWeaver Adapter for IDOCs, SAP NetWeaver Adapter for RFCs, SAP NetWeaver Adapter for File/FTP, SAP NetWeaver Adapter for Http(s), SAP NetWeaver Adapter for SOAP, SAP NetWeaver Adapter for JMS, SAP NetWeaver Adapter for JDBC, SAP NetWeaver Adapter for Mail Protocols (pop, imap, smtp), SAP NetWeaver Adapter for SAP BC Protocol.
- 4.3 SAP NetWeaver OpenHub. SAP NetWeaver OpenHub has to be licensed whenever data is being extracted and transferred from SAP NetWeaver BW into third party target systems.
- 4.4 Planning Application Kit. A license is required for either SAP BusinessObjects Planning, version for SAP NetWeaver or SAP BusinessObjects Planning and Consolidation, version for SAP NetWeaver whenever the Planning Applications Kit is Used to develop planning applications that leverage in-memory processing of core planning functions
- 4.5 SAP NetWeaver BeXBroadcaster. Broadcasting recipients accessing SAP solutions or their respective components need to be licensed for such solutions. SAP NetWeaver BeX Broadcaster, provides Ordering Activities with the ability to broadcast SAP NetWeaver BW information (e.g. BeX reports, BeX Queries and BeX workbooks) to support the distribution of mass information to large audiences in a personalized and secure manner.
- 4.6 SAP NetWeaver Business Warehouse Accelerator. Certain hardware restrictions may apply – details are available upon request.
- 4.7 SAP NetWeaver Enterprise Search. Certain hardware restrictions may apply – details are available upon request.
- 4.8 SAP NetWeaver Master Data Management. For all Enterprise Master Data Management scenarios based on SAP NetWeaver Master Data Management products, a SAP Professional Named User license is required for users maintaining MDM data. In an Enterprise Master Data Management scenario, there is no named user license requirement for users reading/viewing and/or browsing MDM data. This includes, but is not limited to a business user using a search application to identify a record in the MDM repository or catalog users accessing a web catalog.
- 4.9 SAP NetWeaver Master Data Management, product and other data. SAP NetWeaver Master Data Management, product and other data includes the license rights of SAP NetWeaver Master Data Management, printing and Product Content Management (PCM).
- 4.10 SAP Enterprise Master Data Management. SAP NetWeaver MDM, global data synchronization is not included into the scope of SAP Enterprise Master Data Management. For all Enterprise Master Data Management scenarios based on SAP

NetWeaver Master Data Management products, a SAP Professional Named User license is required for users maintaining MDM data. In an Enterprise Master Data Management scenario, there is no named user license requirement for users reading/viewing and/or browsing MDM data. This includes, but is not limited to a business user using a search application to identify a record in the MDM repository or catalog users accessing a web catalog. For all embedded master data management scenarios based on SAP Master Data Governance products the appropriate Named User is required.

- 4.11 SAP NetWeaver Master Data Management, data quality option. SAP Master Data Management, data quality option can only be sold and used in combination with SAP NetWeaver Master Data Management or SAP Enterprise Master Data Management. As such, SAP Named User policies for these products apply. SAP Master Data Management, data quality option allows using SAP BusinessObjects DataServices (DataServices) for SAP Master Data Management use cases only. A SAP Master Data Management use case is defined as a scenario where data is (i) cleansed, de-duplicated and loaded via DataServices into SAP NetWeaver MDM (MDM) or SAP Master Data Governance (MDG) or (ii) data is distributed from MDM or MDG to downstream systems via DataServices. DataServices is used for data management within the MDM repository of SAP NW MDM or SAP MDG. This includes but is not limited to on-entry validation and matching or periodic cleansing and de-duplication of the repository.
- 4.12 SAP NetWeaver Identity Management for employees and SAP NetWeaver Identity Management for non-employees. SAP NetWeaver Identity Management may be used by Ordering Activity to integrate Ordering Activity's SAP applications as part of an application-specific runtime license of SAP NetWeaver Foundation. For any other use (e.g. Integration into 3rd party applications or non-SAP applications), SAP NetWeaver Identity Management needs to be licensed.
- 4.13 SAP NetWeaver Foundation for Third Party Applications. Customers must decide the first time they purchase or license a SAP NetWeaver Foundation for Third Party Applications license which model (user-based or CPU-based) they choose. Switching or mixing CPU-based and user-based licensing for SAP NetWeaver Foundation for Third Party Applications is not permitted.
- 4.14 SAP NetWeaver Portal, enterprise workspaces. SAP NetWeaver Portal enterprise workspaces include the runtime rights of SAP NetWeaver Enterprise Portal. In case SAP NetWeaver Portal enterprise workspaces are used standalone without access to any SAP application SAP Named Users licenses are not required.
- 4.15 Duet Enterprise. Duet Enterprise is delivered with a limited number of Duet Enterprise Starter Services specified in the Documentation and at: https://websmp107.sap-ag.de/~sapdownload/012002523100014103542010E/Duet_Enterprise_services.htm. SAP Platform Standard Users may access Duet Enterprise Starter Services provided (i) Ordering Activity has licensed the package license for Duet Enterprise; and (ii) Duet Enterprise Starter Services are accessed solely through Microsoft SharePoint leveraging Duet Enterprise. Any Use of Duet Enterprise beyond the Duet Enterprise Starter Services requires Ordering Activity to license the applicable SAP Named User type and category. In addition, Ordering Activity is also licensed to Use SAP NetWeaver Gateway but only via MS Sharepoint, MS Office and/or Duet Enterprise for the sole purpose of performing Duet Enterprise functions. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license.
- 4.16 SAP NetWeaver Gateway (embedded license). Certain SAP Software may contain an embedded license of SAP NetWeaver Gateway. Any Use of SAP NetWeaver Gateway (embedded license) beyond the scope of such SAP Software requires separate licensing of SAP NetWeaver Gateway.
- 4.17 SAP NetWeaver Process Orchestration. SAP NetWeaver Process Orchestration includes the rights to use SAP NetWeaver Process Integration (PI), SAP NetWeaver Business Process Management (BPM) and SAP NetWeaver Business Rules Management (BRM).
- 4.18 SAP NetWeaver Single Sign-On Internal User and SAP NetWeaver Single Sign-On External User. Users performing developer or administrative functions require a Named User license in addition to the Package License for the Software.
- 4.19 SAP NetWeaver Landscape Virtualization Management, enterprise edition. Licenses for LVM instances are not permanently assigned to a specific LVM instance, but can be pooled allowing them to be assigned and unassigned to LVM instances as necessary based on the applications being managed by SAP NetWeaver Landscape Virtualization Management. Licenses for the copy/refresh option must be assigned to a specific SAP system/application (e.g. ECC, CRM, SRM, etc.), and can only be reassigned to a different system/application once in a 12 month period. Ordering Activity acknowledges and agrees that it is Ordering Activity's responsibility to ensure that it has all necessary third party license rights required to clone and/or copy an environment using this software, and Ordering Activity has obtained and will maintain all such license rights necessary to use the functionality described herein, including without limitation the license right to operate the target system landscape after cloning and/or copying. Without limiting the materiality of other provisions of this Attachment, the parties agree that any violation by Ordering Activity of third party license rights in this respect will be a material breach of these Attachment A terms.

5. **SAP BusinessObjects**

5.1 **SAP BusinessObjects (BA&T License Model)**

- 5.1.1 SAP BusinessObjects Business Intelligence
There are two ways to license SAP BusinessObjects Business Intelligence capabilities:

- (1) SAP BusinessObjects Business Intelligence Suite model The BI Suite includes the SAP BusinessObjects BI platform along with engines for the following: the Mobile engine, the Crystal Reports engine, the Web Intelligence engine, the Dashboards engine, the Explorer engine, the Analysis, for Microsoft Office engine, and the Analysis, for OLAP engine. The BI Suite Package engines include rights to view content for the BI clients identified above.
- (2) Component (non-Suite) model. The SAP BusinessObjects Business Intelligence products that comprise the SAP BusinessObjects Business Intelligence Suite can be purchased separately via a component model if preferred. Each of the following (the “Client Engines”) can be purchased individually: the SAP BusinessObjects BI platform, the Mobile engine, the Crystal Reports engine, the Web Intelligence engine, the Dashboards engine, the Explorer engine, the Analysis, for Microsoft Office engine, and the Analysis, for OLAP engine. The engines include rights to view content for the BI clients identified above that have been explicitly purchased.

For a single Deployment of SAP BusinessObjects BI platform, either the SAP BusinessObjects Business Intelligence Suite model or the Component Model must be used. They cannot both be used in a single Deployment of SAP BusinessObjects BI platform.

Author/Designer Licenses are available in two ways:

- (a) SAP Application Business Analytics Professional User
- (b) SAP Application BI Limited User

Both the SAP BusinessObjects Business Intelligence Suite and the Component models can be licensed using either the Concurrent Session license metric or the Named User (NUL) license metric.

If purchased using the Component (non-Suite) Model, the Client Engines must be licensed using the same metric (NUL or Concurrent Sessions) as the BI Platform and cannot exceed the number of licenses for the BI Platform using the same license metric.

5.1.2 Dashboard and Visualization

5.1.2.1 SAP BusinessObjects Dashboards software

If you refresh, publish, push or otherwise change data contained in any Dashboards generated SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)), you must have rights to a Dashboards Author/Design License.

5.1.3 BA&T SAP Business Objects Explorer accelerated package

The SAP BusinessObjects Explorer package is intended to support a limited use scenario of search and exploration with SAP BusinessObjects Business Intelligence against both in-memory (accelerated) data sources and traditional data sources. The SAP BusinessObjects Explorer Package includes the rights to use Explorer in the following scenarios (1) search and exploration against data via the SAP BusinessObjects semantic layer associated with this license, (2) search and exploration against data resident in accelerated data sources and (3) search and exploration against data contained within Excel or .csv files.

The BA & T SAP BusinessObjects Explorer accelerated package is comprised of:

1. SAP BusinessObjects Explorer engine
2. SAP BusinessObjects BI platform (to be used only to support SAP BusinessObjects Explorer)
 - a. SAP BusinessObjects BI platform. Ordering Activity is licensed to use only the following features of the SAP BusinessObjects BI platform: (a) Central Management Console (CMC), (b) third party authentication, (c) exploration of in-memory-based indexes with Explorer, (d) Central configuration Manager, (e) information design tool, (f) Translation Manager, (g) Lifecycle Management tool, (h) Upgrade Management tool, (i) BI launch pad
3. SAP BusinessObjects Data Integrator. Use is limited as follows:
 - a. Data Integrator and BusinessObjects BI platform may only be used in conjunction with SAP BusinessObjects Explorer package.
 - b. Data Integrator may not be installed on the same blade as the SAP NetWeaver BWA blade or other data platforms.
 - c. Data Integrator may not be used for standalone ETL (extract, transform and load) projects.

License rights do not include SAP BusinessObjects Mobile engine or specific in-memory platforms (which must be licensed separately).

5.1.4 SAP BusinessObjects Enterprise Information Management Solutions

5.1.4.1 SAP BusinessObjects Enterprise Information Management (EIM) Packages

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in the EIM packages may be installed and Used. Address and Geocoding directories are not included and must be licensed separately.

5.1.5 SAP BusinessObjects Data Services, SAP BusinessObjects Data Integrator, and SAP BusinessObjects Data Quality Management **software**

Address and Geocoding directories are not included and must be licensed separately.

5.1.5.1 SAP BusinessObjects Data Services

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Data Services may be installed and Used.

The Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Data Services includes a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.

5.1.5.2 SAP BusinessObjects Data Quality Management

The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Data Services may be installed and Used. The Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Data Services includes a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.

5.1.5.3 Data Quality Management (“DQM”) SDK

A license to Data Quality Management SDK may be acquired in two configurations as follows: (1) a stand-alone or non-bundled configuration (“DQM SDK Non-Bundled Configuration”) and (2) bundled with CPU Metric licenses to Data Services and/or DQM Premium (“DQM SDK Bundled Configuration”). If acquired in the DQM SDK Non-Bundled Configuration, then a license to DQM SDK is provided as a Server License. If acquired in the DQM SDK Bundled Configuration, then licenses to DQM SDK are included as part of the CPU Metric licenses of Data Services and/or DQM Premium licensed by Ordering Activity, such that a subset of the number of such CPU licenses licensed by Ordering Activity may be Used to solely run DQM SDK, provided that the aggregate number of licenses deployed for DQM SDK and Data Services and DQM Premium must not exceed the total of Data Services and DQM Premium licenses acquired. For example, if Ordering Activity has in the aggregate licensed six CPU licenses of Data Services and/or DQM Premium, then Ordering Activity may Use two CPU licenses to run DQM SDK and the remaining 4 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use three CPU licenses to run DQM SDK and the remaining 3 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use all six CPU licenses to run DQM SDK.

5.1.5.4 SAP BusinessObjects Data Quality Management software, version for SAP Solutions

When licensing SAP BusinessObjects Data Quality Management, version for SAP Solutions, the data quality functions must be Used solely with activities initiated within the SAP applications. When licensed this way, the Use of data quality functions for purposes outside the application it was licensed for is strictly prohibited. A separate license of SAP BusinessObjects Data Quality Management or SAP BusinessObjects Data Services must be licensed if the Use of data quality functions is required outside of the SAP application. Deployment of this license means Ordering Activity has the ability to spread the licensed number of CPU’s across a single or multiple servers as long as the total number of CPU’s Used across the servers add up to the amount of CPUs Ordering Activity is licensed for.

5.1.6 SAP BusinessObjects Rapid Marts Products

When licensing SAP BusinessObjects Rapid Marts, a license for SAP BusinessObjects Data Integrator or Data Services must also be obtained. If SAP BusinessObjects Rapid Marts is licensed with SAP BusinessObjects Data Integrator or Data Services, an individual SAP BusinessObjects Rapid Marts license must be obtained for each SAP BusinessObjects Data Integrator or Data Services license. Copying one SAP BusinessObjects Rapid Marts license and then deploying it to other instances is prohibited.

5.1.7 SAP BusinessObjects Metadata Management

Metadata Management comes with a limited use license of SAP BusinessObjects BI Platform. Ordering Activity may use SAP BusinessObjects BI Platform only in conjunction with Metadata Management. Accessing data that is not specifically created or Used by Metadata Management is in violation of this license. Furthermore, Ordering Activity may Use only the following features of SAP BusinessObjects BI Platform: (a) Central Management Server (CMS) for user or group authentication purposes and (b) Central Management Console for security related to user management and access to integrator sources, source groups, metapedia, utilities and managing and scheduling integrator source runs and utilities runs.

5.1.8 SAP BusinessObjects Data Migration Starter Package

SAP BusinessObjects Data Migration Starter Package is licensed on a Term License basis.

5.1.9 SAP BusinessObjects Data Migration Starter Package

SAP BusinessObjects Data Migration Starter Package may only be deployed in conjunction with SAP BusinessObjects Metadata Management and/or Data Services on a single server having a maximum of four CPUs. SAP BusinessObjects Data Migration Starter Package may only be used in conjunction with a single target system instance where the system ID of the target system is provided in writing to SAP at the beginning of the Ordering Activity’s implementation project.

5.1.10 SAP BusinessObjects Enterprise Performance Management

5.1.10.1 SAP BusinessObjects Financial Consolidation. Use of SAP BusinessObjects BI Platform included with SAP BusinessObjects Financial Consolidation is limited solely to the following features: (a) use of the Central Management Server (“CMS”) to authenticate and/or authorize users for the applications listed above; (b) use of the Central Management Console (“CMC”) to administer user rights and privileges as they pertain to the application and (c) use of Infoview to navigate and launch Analyzer workspaces.

- 5.1.11 SAP BusinessObjects Financial Information Management
When licensing SAP BusinessObjects Financial Information Management, SAP BusinessObjects Data Integrator may be Used:
- solely with certain licensed SAP BusinessObjects solutions for SME, SAP BusinessObjects analytic applications and SAP NetWeaver BW, together with certain licensed SAP BusinessObjects EPM applications, which is specified and Used in accordance with the Documentation; and
 - solely for Use with SAP BusinessObjects Financial Information Management.
- SAP BusinessObjects Financial Information Management is to be licensed whenever data integration with third party systems is required.
Limited functionality of Financial Information Management for which Ordering Activity does not hold a license (“FIM Runtime Software”) may be utilized by certain licensed SAP Software as described in the Documentation. Until Ordering Activity has expressly licensed the FIM Runtime Software, Ordering Activity’s Use of the FIM Runtime Software is limited to access by and through the licensed SAP Software for the sole purpose of enabling performance of the licensed SAP Software and integrating data from licensed SAP Software as specified in the Documentation.
- 5.1.12 SAP Electronic Invoicing for Brazil (Nota Fiscal Electronica)
SAP Electronic Invoicing for Brazil – Outbound and Inbound (Nota Fiscal Electronica – Outbound or Inbound) includes a runtime license SAP PI.
- 5.1.13 SAP BusinessObjects Governance, Risk and Compliance Solutions.
SAP BusinessObjects Governance, Risk and Compliance (GRC) solutions may utilize limited functionality of Xcelsius Enterprise and Crystal Reports for which Ordering Activity does not hold a license (“Reporting Runtime Software”). Until Ordering Activity has expressly licensed the Reporting Runtime Software, Ordering Activity’s Use of such Reporting Runtime Software is limited to access by and through GRC, and any permitted Modifications thereto for the sole purpose of enabling performance of GRC. The Reporting Runtime Software may only be used by licensed SAP Named Users for GRC. Ordering Activity is not licensed to use any Crystal Reports components for .Net application development.
- 5.1.13.1 SAP BusinessObjects Access Control, starter edition
Use of SAP BusinessObjects Access Control, starter edition is limited to the measuring, monitoring and reporting of access risks; and administering and reporting of superuser access.
- 5.1.14 SAP BusinessObjects solutions for SME
- 5.1.14.1 SAP BusinessObjects Edge BI (Edge BI)
Edge BI licensed by Users has a limit of 250 users per server. Edge BI includes publishing up to 1000 Recipients. Edge BI includes one (1) SAP Business Analytics Professional user license and nine (9) SAP BI Limited user licenses for each block of 10 users or 5 Concurrent Sessions licensed exclusively for the use of Edge BI. Edge BI licensed on a Concurrent Session License basis shall not exceed 50 Concurrent Sessions in a single deployment. After Ordering Activity acquired Concurrent Session packages, Ordering Activity may license add-on user licenses of Edge BI in the same quantity as the number of Concurrent Session Licenses.
- 5.1.14.2 SAP BusinessObjects Edge BI, version with data management
SAP BusinessObjects Data Quality Management and SAP BusinessObjects Data Integrator delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 named users or 50 Concurrent Sessions) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to three CPUs. SAP BusinessObjects Data Quality Management and SAP BusinessObjects Data Integrator may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore.
- 5.1.14.3 SAP BusinessObjects Edge BI, version with data integration
SAP BusinessObjects Data Integrator delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 named users or 50 Concurrent Sessions) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to three CPUs. SAP BusinessObjects Edge BI, version with data integration and SAP BusinessObjects Data Integrator may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore. When SAP BusinessObjects Data Integrator is used with SAP BusinessObjects Edge Rapid Marts, it may be deployed on a server with up to 4 CPUs.
- 5.1.14.4 SAP BusinessObjects Edge Data Services, Edge Data Integrator and Edge Data Quality Management (Edge EIM Solutions)
The total number of CPUs licensed represents the maximum total cumulative CPUs on which all of the Software included in SAP BusinessObjects Edge Data Services may be installed and Used. For SAP BusinessObjects Edge Data Services and Edge Data Quality Management, Use of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product) is limited to five Named Users. Edge Data Services and Edge Data Quality Management include a runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight. Address and Geocoding directories are not included in

any of the Edge EIM Solutions and must be licensed separately. Each deployment of any of the Edge EIM Solutions is limited to a single server, with a minimum of 3 CPUs and a maximum of 5 CPUs. All Edge EIM solutions include the SAP Business Analytics Professional User license exclusively for the use of the applicable Edge EIM Solutions, and do not require additional SAP Application Named Users.

- 5.1.14.5 **SAP BusinessObjects Edge Rapid Marts**
When licensing the SAP BusinessObjects Edge Rapid Marts Product, a license for SAP BusinessObjects Edge BI, version with Data Integration or SAP BusinessObjects Edge BI, version with Data Management must also be obtained. SAP BusinessObjects Edge Rapid Marts may only be deployed on a single server and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server with up to 4 CPU. SAP BusinessObjects Edge Rapid Marts can only be used in conjunction with SAP BusinessObjects Edge BI. Copying one SAP BusinessObjects Edge Rapid Marts license and then deploying it to other instances is prohibited. Each SAP BusinessObjects Edge Rapid Mart includes the related Application Interface license
- 5.1.14.6 **SAP BusinessObjects Edge Planning and Consolidation**
The licensing of the SAP BusinessObjects Edge Planning and Consolidation is restricted to 100 users maximum on a single server,
- 5.1.14.7 **SAP BusinessObjects Edge Strategy Management**
License limitation: Maximum deployment of single application server only and not more than 70 users. Each deployment is limited to 25 contexts and 25 data models.
- 5.1.15 **SAP BusinessObjects analytic solutions**
Limited License: Use of the SAP BusinessObjects analytic solution ("BA Solutions"), and any SAP software licensed as part of the BA Solution ("BA software"), is limited to the BA Solution specific purpose ("Purpose").
BA software: SAP may offer BA software contained in the BA Solution also as a separate SAP software product on the SAP list of prices and conditions. Terms and conditions for, and functionality of BA Software may be different from the separate SAP software product. Additional functionality of such SAP software product may be subject to a separate license agreement and additional license fees.
- 5.1.16 **SAP BusinessObjects Enterprise Risk Reporting for Banking.**
Use of this Software is limited to measuring and monitoring enterprise risk for Ordering Activity's banking operations.
- 5.1.17 **SAP BusinessObjects Trade Promotion Effectiveness Analysis**
Use of this Software is limited to performing analysis on trade promotion effectiveness.
- 5.1.18 **SAP BusinessObjects Sales Analysis for Retail**
Use this Software is limited to performing retail and point of sale data analysis.
- 5.1.19 **SAP BusinessObjects Upstream Operations Performance Analysis application**
Use of this Software is limited to the analysis surrounding of the operational data supporting upstream production of oil and gas hydrocarbons.
- 5.1.20 **SAP BusinessObjects Planning and Consolidation for Banking**
Use of this Software is limited to the following for Ordering Activity's banking operations: financial planning, budgeting, forecasting and consolidations, and reporting of financial and other plan data.
- 5.1.21 **SAP BusinessObjects Planning and Consolidation for Public Sector**
Use of this Software is limited to the following for Ordering Activity's Public Sector business operations: long range business planning, forecasting, financial consolidation and reporting, and performance management.
- 5.1.22 **SAP BusinessObjects Planning for Public Sector**
Use of this Software is limited to long range planning, budgeting and planning, forecasting and reporting in the Public Sector.
- 5.1.23 **SAP BusinessObjects Sales and Operational Planning rapid deployment solution**
Use of this Software is limited to the Sales and Operational business planning process such as consensus demand management, supply visibility, rough cut capacity aggregation, and monitoring business process utilizing forecast input from Sales, Marketing, Operations and Finance.
- 5.1.24 **Additional License Conditions for Knowledge Accelerator**
- 5.1.24.1 **SAP BusinessObjects Knowledge Accelerator (other than ON RWD platform.** SAP BusinessObjects Knowledge Accelerator may be used to meet Ordering Activity's employee training needs and may not be used by or on behalf of any third party. SAP BusinessObjects Knowledge Accelerator other than on RWD Platform is an older version of Knowledge Accelerator (pre-XI release 3) which will continue to be sold by SAP BusinessObjects. The following statements relate only to this older version of Business Objects Knowledge Accelerator: Any customization tools included with the SAP BusinessObjects Knowledge Accelerator Software (Global Knowledge™ On-Demand-for-Business Objects Software) shall be used only for modifying or customizing the content developed by SAP BusinessObjects Knowledge Accelerator Software, and only by the number of instructional designers and administrators specified in this Order Schedule. Ordering

Activity shall not modify, reverse engineer, or distribute for commercial or non-commercial use such tools, or use such tools to develop other content, including content related to other Licensor products.

- 5.1.24.2 Knowledge Accelerator on RWD Platform. SAP BusinessObjects Knowledge Accelerator may be used to meet Ordering Activity's employee training needs and may not be used by or on behalf of any third party. Notwithstanding any other provision of the Training Schedule, NULs of Knowledge Accelerator may not be transferred to other individuals, even if the original user is no longer permitted access to Knowledge Accelerator. If an individual is no longer employed by Ordering Activity, Ordering Activity may transfer such individual's NUL to another user.
- 5.1.25 Predictive Workbench. Predictive Workbench includes an embedded third party product, which must be used in connection with BusinessObjects Enterprise and not on a standalone basis.
- 5.2 SAP BusinessObjects (Classic Solutions Model)
- 5.2.1 SAP BusinessObjects Enterprise
- 5.2.1.1 Dashboard Builder. The software components, tools and utilities supplied with Dashboard Builder may only be used with the product with which they were provided. In addition, the Web Intelligence utilities provided with Dashboard Builder may only be used to view the analytic templates provided with Dashboard Builder.
- 5.2.1.3 SAP BusinessObjects Enterprise. You may not combine licenses for different editions of BusinessObjects Enterprise in a single Deployment (for example, Premium licenses may not be combined with Professional licenses in the same Deployment). You may use BusinessObjects Enterprise Professional to publish and distribute only one of SAP BusinessObjects' proprietary report format types (Crystal Reports, Web Intelligence/Desktop Intelligence/BusinessObjects/Voyager). Web Intelligence and Desktop Intelligence are deemed a single proprietary report format for this purpose. If you wish to publish and distribute more than one report format type, you must acquire BusinessObjects Enterprise Premium. Notwithstanding the foregoing, if Ordering Activity migrates from a combined BusinessObjects and Web Intelligence Deployment to BusinessObjects Enterprise, Ordering Activity may use both BusinessObjects and Web Intelligence report types in that Deployment.
- 5.2.1.3 SAP BusinessObjects Product Options. Options for BusinessObjects Enterprise Professional, Crystal Enterprise Professional, and Crystal Reports Server (collectively, "Underlying Application") are licensed as add-ons to a Deployment. Options may include Crystal Reports Explorer, Auditing, Publishing, Live Office, Integration Kits for third party applications and other products designated as Options for an Underlying Application. If both the Underlying Application and the Options are licensed on a CPU metric, the number and type of Option licenses must match the number and type of the Underlying Application licenses in the Deployment in which the Options are used
- 5.2.1.4 Web Intelligence Interactive Viewing. Keycodes to Web Intelligence Interactive Viewing unlock all features of the full Web Intelligence product. However, Web Intelligence Interactive Viewing is a limited license and may not be utilized to edit or create documents.
- 5.2.2 SAP BusinessObjects BI Package. SAP BusinessObjects BI Package includes a restricted license of SAP BusinessObjects Information Steward. Use of the SAP BusinessObjects Information Steward is limited to the Metadata Management and Metapedia functionality.
- 5.2.3 SAP BusinessObjects BI Starter Package. The licensing of the SAP BusinessObjects BI starter package is restricted to maximum of 100 users maximum on a single server.
- 5.2.4 Dashboard and Visualization
- 5.2.4.1 SAP® BusinessObjects™ Xcelsius® software. If you refresh, publish, push or otherwise change data contained in any Xcelsius generated SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)), you must purchase a Xcelsius Interactive Viewing License. Xcelsius Interactive Viewing is included with and matches the Named User Licenses ("NUL") of Crystal Reports Server and BusinessObjects Edge. Unlimited Interactive Viewing is included with Xcelsius Engage but limited to SWF files with a maximum of two connections.
- 5.2.5 SAP BusinessObjects Enterprise Information Management Solutions
- 5.2.5.1 SAP BusinessObjects Data Services, SAP BusinessObjects Data Integrator, and SAP BusinessObjects Data Quality Management software.
If Ordering Activity wants to deploy a Data Services, Data Integrator, or Data Quality Management License to access enterprise data sources such as packaged applications, databases, or technology infrastructure products, Ordering Activity must obtain individual interface licenses such as Application Interface, Database Interface, JMS Technology Interface, or Salesforce.com Technology Interface. Address directories are not included and must be licensed separately.
- 5.2.5.2 SAP BusinessObjects Data Services. The following is included in each license of the SAP BusinessObjects Data Services:
- Five Named Users of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product)

- Runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.
- One license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development and Grid Computing
- Database Interface licenses to an uncapped number of Types of databases
- Salesforce.com Technology Interface
- JMS Technology Interface

5.2.6 SAP BusinessObjects Data Integrator

5.2.6.1 SAP BusinessObjects Data Integrator Starter. Each license of the Software includes one Database Interface license.

5.2.6.2 SAP BusinessObjects Data Integrator Professional. Each license of the Software includes two Database Interface licenses.

5.2.6.3 SAP BusinessObjects Data Integrator Premium. Each license of the Software includes one license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development, Grid Computing, Salesforce.com Technology Interface, JMS Technology Interface; and Database Interface licenses to an uncapped number of database Types.

5.2.7 SAP BusinessObjects Data Quality Management

5.2.7.1 SAP BusinessObjects eDQ Management. Ordering Activity may Use SAP BusinessObjects eDQ Management for transactional or real-time environments only. Each license of the Software includes one license of SAP BusinessObjects DQM, cleansing package option for one language.

5.2.7.2 SAP BusinessObjects Data Quality Management Professional. Each license of the Software includes one Database Interface license and one license of SAP BusinessObjects DQM, cleansing package option for one language.

5.2.7.3 SAP BusinessObjects Data Quality Management Premium. Each license of the Software includes:

- Five Named Users of SAP BusinessObjects Data Insight (except for licenses bundled or otherwise provided in combination with or for use with a third party product)
- Runtime license for 2 CPU licenses of SAP BusinessObjects Information Steward. Use of the BusinessObjects Information Steward is limited to Cleansing Package Builder and the Basic and Advanced Profiling capabilities that are contained in Data Insight.
- Two Database Interface licenses
- One license of SAP BusinessObjects DQM, cleansing package option for one language
- SAP BusinessObjects DQM, SDK
- One license of each of Real Time Transactional Processing, Data Source Web Service Access, Multi-user Team Development and Grid Computing

5.2.7.4 Interface licenses. A prerequisite for any Application Interface, Database Interface or Technology Interface license is a Data Services, Data Integrator, or Data Quality Management license. Application Interface is licensed per application Instance. "Instance" means the Software may only be used for one unique connection to a specified application or technology. If multiple instances of an application are accessed by the Application Interface, then one Application Interface License must be acquired for each instance. Application Interface Unlimited, Database Interface, JMS Technology Interface and Salesforce.com Technology Interface are licensed per application, database or technology Type, as applicable. "Type" means an unlimited number of connections to the single, specified application, database or technology.

5.2.7.5 Data Quality Management ("DQM") SDK. A license to Data Quality Management SDK may be acquired in two configurations as follows: (1) a stand-alone or non-bundled configuration ("DQM SDK Non-Bundled Configuration"), and (2) bundled with CPU Metric licenses to Data Services and/or DQM Premium ("DQM SDK Bundled Configuration"). If acquired in the DQM SDK Non-Bundled Configuration, then a license to DQM SDK is provided as a Server License. If acquired in the DQM SDK Bundled Configuration, then licenses to DQM SDK are included as part of the CPU Metric licenses of Data Services and/or DQM Premium licensed by Ordering Activity, such that a subset of the number of such CPU licenses licensed by Ordering Activity may be Used to solely run DQM SDK, provided that the aggregate number of licenses deployed for DQM SDK and Data Services and DQM Premium must not exceed the total of Data Services and DQM Premium licenses acquired. For example, if Ordering Activity has in the aggregate licensed six CPU licenses of Data Services and/or DQM Premium, then Ordering Activity may Use two CPU licenses to run DQM SDK and the remaining 4 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use three CPU licenses to run DQM SDK and the remaining 3 CPU licenses to run Data Services and/or DQM Premium; or Ordering Activity may Use all six CPU licenses to run DQM SDK.

5.2.7.6 SAP BusinessObjects Data Quality Management software, versions for use with SAP, Siebel or Informatica applications. When licensing SAP BusinessObjects Data Quality Management, version for SAP solutions, Siebel applications, or Informatica PowerCenter, the data quality functions must be Used solely with activities initiated within the SAP, Siebel, or

Informatica application, respectively. When licensed this way, the Use of data quality functions for purposes outside the application it was licensed for is strictly prohibited. A separate license of SAP BusinessObjects Data Quality Management or SAP BusinessObjects Data Services must be licensed if the Use of data quality functions is required outside of the SAP, Siebel, or Informatica application. Deployment of this license means Ordering Activity has the ability to spread the licensed number of CPU's across a single or multiple servers as long as the total number of CPU's Used across the servers add up to the amount of CPUs Ordering Activity is licensed for. Grid computing licenses are not included and require to be licensed separately.

5.2.7.7 SAP BusinessObjects Rapid Marts Products. When licensing SAP BusinessObjects Rapid Marts, a license for SAP BusinessObjects Data Integrator or Data Services must also be obtained. If SAP BusinessObjects Rapid Marts is licensed with SAP BusinessObjects Data Integrator or Data Services, an individual SAP BusinessObjects Rapid Marts license must be obtained for each SAP BusinessObjects Data Integrator or Data Services license. Copying one SAP BusinessObjects Rapid Marts license and then deploying it to other instances is prohibited. In addition to the foregoing, Ordering Activity must license certain applicable Application Interfaces.

5.2.7.8 SAP BusinessObjects Metadata Management. Metadata Management comes with a limited use license of SAP BusinessObjects Enterprise. Ordering Activity may use SAP BusinessObjects Enterprise only in conjunction with Metadata Management. Accessing data that is not specifically created or Used by Metadata Management is in violation of this license. Furthermore, Ordering Activity may Use only the following features of SAP BusinessObjects Enterprise: (a) Central Management Server (CMS) for user or group authentication purposes and (b) Central Management Console for security related to user management and access to integrator sources, source groups, metapedia, utilities and managing and scheduling integrator source runs and utilities runs.

5.2.8 SAP BusinessObjects Explorer

5.2.8.1. Keycodes for Explorer used in conjunction with SAP BusinessObjects Enterprise Professional (for Enterprise Reporting) will unlock all features of the Web Intelligence product. Such Web Intelligence features may be used only by SAP BusinessObjects Explorer.

5.2.8.2 SAP Business Objects Explorer (Data Exploration Component). SAP BusinessObjects Explorer (Data Exploration Component) includes SAP BusinessObjects Data Integrator Premium and SAP BusinessObjects Enterprise. Ordering Activity's use is limited as follows:

- Data Integrator Premium and BusinessObjects Enterprise may only be used in conjunction with SAP BusinessObjects Explorer (Data Exploration Component).
- Data Integrator Premium may not be installed on the same blade as the SAP NetWeaver BWA blade.
- Data Integrator Premium may not be used for standalone ETL (extract, transform and load) projects.
- Ordering Activity is licensed to Use only the following features of SAP BusinessObjects Enterprise: (a) Central Management Console (CMC), (b) third party authentication, (c) exploration of BWA-based indexes with Explorer, (d) Central configuration Manager, and (e) Import Wizard.

5.2.9 SAP BusinessObjects solutions for SME

5.2.9.1 SAP BusinessObjects Edge BI (Edge BI). Edge BI licensed by SAP Named Users has a limit of 250 users per server. Edge BI includes publishing up to 1000 Recipients. Standalone Use of Edge BI standalone does not require SAP Application named users; when used with SAP ERP, the SAP Business Expert named user is not relevant and an SAP Professional named user is sufficient. Edge BI licensed as CAL (Concurrent Access License) through SAP BusinessObjects resellers shall not exceed 50 CALs in a single deployment. After Ordering Activity acquired CAL packages from an SAP BusinessObjects reseller, Ordering Activity may license add-on named user licenses of Edge BI in the same quantity as the number of CAL licensed.

5.2.9.2 SAP BusinessObjects Edge BI, version with data management. SAP BusinessObjects Data Quality Professional and SAP BusinessObjects Data Integrator Starter delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 users) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge BI product is deployed, or (b) on a separate server having up to two CPUs. SAP BusinessObjects Data Quality Professional and SAP BusinessObjects Data Integrator Starter may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore.

5.2.9.3 SAP BusinessObjects Edge BI, version with data integration. SAP BusinessObjects Data Integrator Starter delivered with SAP BusinessObjects Edge BI may only be deployed on a single server (up to 250 users) and must be deployed either (a) on the same server where the corresponding SAP BusinessObjects Edge Series product is deployed, or (b) on a separate server having up to two CPUs. SAP BusinessObjects Edge BI, version with data integration and SAP BusinessObjects Data Integrator Starter may only be used in conjunction with SAP BusinessObjects Edge BI and may not be used on a stand-alone basis. Ordering Activity shall only be permitted to use up to two database types under the database interfaces and shall only be permitted one target datastore. When SAP BusinessObjects Data Integrator Starter is used with SAP BusinessObjects Edge Rapid Marts it may be deployed on a server with up to 4 CPUs.

6 SAP Crystal

6.1 Use Rights for All SAP Crystal Products

6.1.1 Definitions

- 6.1.1.1 "SAP Crystal software" is defined to be the following products: SAP Crystal Reports, SAP Crystal Server, SAP Crystal Reports Server, SAP Crystal Dashboard Design, SAP Crystal Presentation Design, SAP Crystal Interactive Analysis, and Xcelsius Engage Server.
- 6.1.1.2 "Desktop SAP Crystal software" is defined to be all SAP Crystal products except for SAP Crystal Server and SAP Crystal Reports Server.
- 6.1.1.3 "Connected Presentation" means any SWF file created with SAP Crystal Dashboard Design personal edition, SAP Crystal Dashboard Design departmental edition, or Xcelsius Engage Server that refresh, publish, push or otherwise change data contained in such SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)),
- 6.1.1.4 "Self Contained Presentation" means any SWF file created with SAP Crystal Presentation Design, SAP Crystal Dashboard Design personal edition, SAP Crystal Dashboard Design departmental edition, or Xcelsius Engage Server that does not refresh, publish, push or otherwise change data contained in such SWF file (or SWF file exported to other supported file formats (e.g., PDF, AIR, PPT)).

6.1.2 SAP Crystal Software Usage. Ordering Activity may use SAP Crystal software to deliver training and consulting services for such SAP Crystal software, provided that each individual receiving the benefits of the training or consulting services has acquired a license separately to Use the applicable SAP Crystal Software.

6.1.3 Desktop SAP Crystal Software Usage. With the exception of Connected Presentations, and subject to Section 6.2.8, Ordering Activity may distribute the output files (e.g. PDF, SWF, XLF, WID or RPT file format) generated by the Desktop SAP Crystal software to third parties provided that Ordering Activity complies with the following requirements: (a) the output files reside outside of the Software and do not directly or indirectly access the Software or activate the processing capabilities of the Software, or otherwise employ the Software; (b) Ordering Activity remains solely responsible for support, technical or other assistance, required or requested by anyone receiving such output files; (c) Ordering Activity does not use the name, logo, or trademark of Licensor, or the Software, without prior written permission from SAP;

Ordering Activity(d) Ordering Activity shall secure the end user's ("End User") consent to terms substantially similar to the terms set forth in Section 6.3.8.

6.1.4 Training Workstation License for Desktop SAP Crystal software. When Desktop SAP Crystal software is used on a workstation that is used exclusively for training, the license applies to the workstation and not the named user using the Software. One license is required per training workstation.

6.1.5 Use of Screenshots and wordmarks for SAP Crystal software. Ordering Activity may reproduce and distribute screen shots and wordmarks for SAP Crystal software in documents or media provided that:

- a) The document or media isn't for commercial training material or third party training material and/or for-profit training material.
- b) Ordering Activity's Use may not be obscene or pornographic, and Ordering Activity may not be disparaging, defamatory, or libelous to SAP, any of its software, or any other person or entity.
- c) Ordering Activity's Use may not directly or indirectly imply SAP sponsorship, affiliation, or endorsement of Ordering Activity's product or service.
- d) Ordering Activity may not Use the screen shot in a comparative advertisement
- e) Ordering Activity may not alter the screen shot in any way except to resize or crop the screen shot.
- f) Ordering Activity may not include portions of a screen shot in other product user interface.
- g) Ordering Activity may not Use screen shots that contain third-party content unless Ordering Activity has obtained the express permission from the third-party.
- h) Ordering Activity must include the following copyright attribution statement: "SAP product screen shot(s) reprinted with permission from SAP."
- i) If Ordering Activity's Use includes references to a SAP Software, Ordering Activity must use the full name of the Software.
- j) Ordering Activity may not use a screen shot that contains an image of an identifiable individual unless Ordering Activity has obtained permission from the individual.

6.2 SAP Crystal Reports runtime product

6.2.1 Scope. This section applies to the runtime product included in SAP Crystal Reports 2008, Crystal Reports XI, SAP Crystal Reports for Visual Studio 2010, and SAP Crystal Reports for Eclipse.

6.2.2 Definitions

6.2.2.1 "Client Application" means an application developed by Ordering Activity that a) utilizes the Runtime Product, b) is installed fully on an end user's machine, with all report processing local to that machine, and c) adds significant and primary functionality to the Runtime Product.

- 6.2.2.2 “Internal Installation” or “Internally Install” means installing into production Client Applications and/or Server Applications on one or more computers within Ordering Activity’s company or organization only in connection with Ordering Activity’s internal business purposes.
- 6.2.2.3 “Distribution” or “Distribute” means selling, leasing, licensing or redistributing Client Applications and/or Server Applications to third party end users external to Ordering Activity’s company or organization.
- 6.2.2.4 “Runtime Product” means the version specific files and application program interfaces (APIs) specified in the RUNTIME.TXT file provided with SAP Crystal Reports 2008, SAP Crystal Reports for Eclipse 2.0, and SAP Crystal Reports for Visual Studio 2010.
- 6.2.2.5 “Server Application” means an application developed by Ordering Activity that a) utilizes the Runtime Product, b) allows more than one user to access the Runtime Product either directly or indirectly through any middle tier application(s), and c) adds significant and primary functionality to the Runtime Product. A Client Application installed in a Windows terminal server environment (e.g. Citrix or Microsoft Remote Desktop Platform) is a Server Application.
- 6.2.3 Usage. Ordering Activity may install and Use a single copy of the Runtime Product to develop Client Applications and Server Applications. The Distribution and Internal Installation terms and conditions differ based on the type of applications Ordering Activity develops, as described in the following sections.
- 6.2.4 Internal Installation of Client Applications and Server Applications. Licensor grants Ordering Activity a personal, nonexclusive, limited license to Internally Install the Runtime Product with Client Applications and Server Applications.
- 6.2.5 Distribution of Client Applications. Subject to Ordering Activity’s compliance with all of the terms herein, including without limitation section 6.2.7, Licensor grants Ordering Activity a personal, nonexclusive, limited license to Distribute Client Applications.
- 6.2.6 Distribution of Server Applications. Subject to Ordering Activity’s compliance with all of the terms herein, including without limitation section 6.2.7, Licensor grants Ordering Activity a personal, nonexclusive limited license to Distribute Server Applications to third parties provided that either a) Ordering Activity has acquired a licensed copy of Crystal Reports for each Deployment of a Server Application that is Distributed, and the version of the Runtime Product utilized by such Server Application is the same version as Ordering Activity’s licensed copy of Crystal Reports or b) Ordering Activity owns at least one licensed copy of the SAP Crystal Reports runtime server license.
- 6.2.7 Runtime Product Distribution Requirements.
If Ordering Activity distributes the Runtime Product to third parties pursuant to sections 6.2.5 or 6.2.6, Ordering Activity shall comply with the following requirements:
(a) Ordering Activity remains solely responsible for support, service, upgrades, and technical or other assistance, required or requested by anyone receiving such Runtime Product copies or sample applications;
(b) Ordering Activity does not use the name, logo, or trademark of Licensor, or the Software, without prior written permission from SAP;
Ordering Activity
(c) Ordering Activity shall not distribute the Runtime Product with any general-purpose report writing, data analysis or report delivery product or any other product that performs the same or similar functions as SAP’s product offerings; and
(d) Ordering Activity shall secure the end user’s (“End User”) consent to terms substantially similar to the following:
End User agrees not to modify, disassemble, decompile, translate, adapt or reverse-engineer the Runtime Product or the report file (.RPT) format;
End User agrees not to distribute the Runtime Product to any third party or use the Runtime Product on a rental or timesharing basis or to operate a service bureau facility for the benefit of third-parties;
End User agrees not to use the Runtime Product to create for distribution a product that is generally competitive with SAP’s product offerings;
End User agrees not to use the Runtime Product to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of SAP;
- 6.3 SAP Crystal Dashboard Design, departmental edition.
- 6.3.1 Usage. Self Contained Presentations created with the departmental edition of SAP Crystal Dashboard Design may be freely redistributed.
SWF files generated by the departmental edition that access data exclusively with the Crystal Reports connector can be embedded into a Crystal Report and the resulting report can be redistributed without any additional licensing requirements.
- 6.3.2 Viewing License. If you refresh, publish, push or otherwise change data contained in any SWF file generated by the departmental edition (or SWF file exported to other supported file formats such as PDF, AIR, PPT), you must acquire SAP Crystal Dashboard Viewing option for each named user that can view the SWF. This option is included with and matches the Named User Licenses (“NUL”) of SAP Crystal Reports Server and SAP Crystal Server. One named user license of the Dashboard Viewing option is included with the departmental edition license.

6.3.3 Restrictions. SWF files generated by the departmental edition:

- Cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.
- Can be deployed standalone only to SAP Crystal Reports Server or SAP Crystal Server.
- Cannot access any data sources from SAP Software, with the exception of SAP BusinessOne.
- Cannot be distributed to more than 100 end users.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

6.4 SAP Crystal Dashboard Design, personal edition

6.4.1 Usage. Self Contained Presentations created with the personal edition of SAP Crystal Dashboard Design may be freely redistributed. SWF files created by the personal edition of SAP Crystal Dashboard Design that access data exclusively with the Crystal Reports connector can be embedded into a Crystal Report and the resulting report can be redistributed without requiring additional licensing.

6.4.2 Restrictions. SWF files generated by the personal edition:

- Cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.
- Can be deployed standalone only to SAP Crystal Reports Server, or SAP Crystal Server.
- Cannot access any data sources from SAP Software, with the exception of SAP BusinessOne.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

6.5 SAP Crystal Presentation Design

6.5.1 Usage. Self Contained Presentations created with all editions of SAP Crystal Presentation Design may be freely redistributed. Ordering Activities of the enterprise edition of SAP Crystal Presentation Design can deploy the Software to any number of employees and contractors, provided those employees and contractors are directly employed by the Ordering Activity. This license does not extend beyond Ordering Activity's corporate entity and excludes all subsidiaries or affiliates of the Ordering Activity.

6.5.2 Restrictions. The student edition of SAP Crystal Presentation Design may only be Used by full time or part time students of a secondary or post-secondary educational institution.

6.6 SAP Crystal Server

6.6.1 Scope. This section applies to SAP Crystal Reports Server and SAP Crystal Server. Throughout this section, the term 'SAP Crystal Server' shall be defined to include both products.

6.6.2 Usage. SAP Crystal Reports which contain SWF files created by either the personal or departmental edition of SAP Crystal Dashboard Design that access data exclusively with the Crystal Reports connector can be viewed by users with either NUL or CAL licenses.

6.6.3 Restrictions. For each Deployment, SAP Crystal Server may be installed and Used only on a single Server. Ordering Activity may not attempt to cluster the system across multiple live Servers. Ordering Activity cannot use SAP Crystal Server to access data in SAP applications with the exception of SAP Business One. Ordering Activity shall not make any single dashboard available to more than 100 named users, nor to users covered under a CAL license.

The following software features and functions can only be accessed using NUL licenses:

- Dashboard viewing through the InfoView or BI Launchpad portal,
- Dashboard viewing through any portal integration kit.
- Dashboard Builder
- BI Workspace
- SAP BusinessObjects Explorer (SAP Crystal Server 2011 and later only)

The following integration kits are not licensed for Use with SAP Crystal Server:

- SAP BusinessObjects Integration for PeopleSoft Enterprise
- SAP BusinessObjects Integration for JDE EnterpriseOne
- SAP BusinessObjects Integration for Siebel
- SAP BusinessObjects Integration for Oracle E-Business Suite
- SAP BusinessObjects Integration for SAP

6.7 Xcelsius Engage Server

6.7.1 Usage. Self Contained Presentations created with Xcelsius Engage Server may be freely redistributed. A connected presentation that receives its data exclusively from the Crystal Reports connector, and is embedded into a Crystal Report is considered a self-contained presentation.

- 6.7.2 Restrictions. SWF files generated by Xcelsius Engage Server cannot be deployed to SAP BusinessObjects Enterprise or SAP BusinessObjects Edge.

Connected Presentations may be used only for users internal business purposes and not pursuant to a commercial sale, rental, or lease of the Connected Presentations (whether alone or in combination with another program or product).

7. Third Party Products

- 7.1 Address Directories. Following are additional license conditions for content for data quality and data services products (“Address Directories”)

7.1.1

- Address Directories, any related documentation and any intellectual property rights therein at all times remain the property of SAP and its third party suppliers (as the case may be);
- Ordering Activities are not permitted to resell the data. Address Directories shall not be used within a service bureau environment. In selected cases, the use by an affiliate will require a separate license (see all specific directory restrictions in the “Pass Through Terms for Address Directories” attached hereto as Exhibit 5 which constitute a part of the terms and conditions of Ordering Activity’s use of such Address Directories).
- Address Directories may only be used together with the SAP Data Quality and/or Data Services Products; a perpetual license for the SAP Data Quality and Data Services Products is a prerequisite for using Address Directories;
- Address Directories may not be used for creating a mailing list, database or other derivative work, [but may be used to cleanse an existing mailing list or database of an End User](#);
- Address Directories will be updated from time to time: only the current version of an Address Directory may be used;
- SAP may use a software utility mechanism in Address Directories that imposes time limitations to prevent the use of outdated Address Directories;
- SAP’s third party suppliers shall have no liability to End User or any third party as a result of End User’s use of the Address Directories or any services you receive related to the use of the Address Directories;
- A third-party supplier for Address Directories may elect to terminate SAP’s right to distribute Address Directories or to provide updates during the term of your subscription, in which case Ordering Activity’s sole remedy will be to receive a refund of fees for the portion of the subscription for which Ordering Activity is unable to use such Address Directories, unless otherwise stated in the Pass-Through Terms.

7.1.2 Licensing Information

- Address Directories are sold on a subscription model basis, therefore no annual maintenance fee is to be charged and, except to the extent the Address Directories content source makes content updates available to SAP, no SAP maintenance or support is provided for these products.
- The Initial Term of this shall be 12 (twelve) calendar months from the Effective Date of the “Initial Term”.
- Automatic renewals occur on an annual basis, subject to availability of the licensed Address Directory on the current SAP List of Prices and Conditions, and will be processed and invoiced according to the then current pricing and terms. After the Initial Term, this subscription license may be terminated by either party with 90 days written notice prior to the start of the following Renewal Term. Any termination must be in writing to the affected party and will be effective at the end of the then-current Initial/Renewal Term during which the termination notice is received by SAP.

7.1.3 Geographic Restrictions

- USPS products may only be sold in the US and are not available outside of the US:
- US NATIONAL DIRECTORY PRODUCTS MAY BE SOLD GLOBALLY.
- SPECIALIZED PRODUCTS SUCH AS LACSLINK, SUITELINK, NCOALINK, DPV, USPS DELIVERY SEQUENCE FILE – DSF2 AND RDI MAY ONLY BE SOLD TO US PERSONS OR ENTITIES FOR USE WITHIN THE US.
- THE NCOALINK INTERFACE CAN ONLY BE SOLD TO PERSONS WHO ARE AUTHORIZED BY THE USPS TO PURCHASE NCOALINK DATA. (NOTE: WE ONLY SELL THE NCOALINK INTERFACE AND CUSTOMERS MUST OBTAIN THE NCOALINK DATA DIRECTLY FROM THE USPS AND MUST BE CERTIFIED TO PURCHASE SUCH DATA BY THE USPS.)

- 7.1.4 USPS Certified Address Directory Option for DPV and Lacslink. In the event Ordering Activity activates the locking features of the Software and wishes to unlock such features, Ordering Activity agrees to provide certain information relating to the list owner, locking record details and the origin of the locking record including but not limited to the type of list, owner of list if rented and other tracking information as requested by the Licensor or the USPS.

- 7.1.5 In no event shall Contractor’s total liability for damages of any kind or nature in any way arising from or related to the licensed Address Directories exceed an amount equal to the annual Subscription Fee paid in the twelve (12) month period prior to the date of the claim.

7.2 Databases

DB2 for Linux, Unix and Windows:

Enterprise Edition Database partitioning, Storage Optimization included

Oracle DB:

Enterprise Edition, Oracle Objects Option, Partitioning, Intermedia, Oracle Advanced Security Option, Oracle Advanced Compression Option, Standard Management Pack, DBA Management Pack, Diagnostic Pack, Tuning

Pack, Provisioning Pack and Change Management Pack. For details and possible limitations regarding the support of the licensed options please see SAP support notes.

Oracle Extended Package
Real Application Cluster (RAC), Database Vault

DB2 for z/OS:

DB2 for z/OS and S/390, IBM DB2 Operational Utilities for z/OS, IBM DB2 Diagnostic and Recovery Utilities for z/OS, IBM DB2 Connect Enterprise Edition. Upgrade options for customers having licensed DB2 for OS/390 before October 1, 2003 are available upon request.

Microsoft SQL Server:
Enterprise Edition

- 7.3 SAP Test Acceleration and Optimization. SAP Test Acceleration and Optimization requires a license of HP Quality Center including the modules Business Process Testing and QuickTest Professional. This can be licensed from HP directly or by licensing "SAP Quality Center by HP" (material number 7010568).
- 7.4 Supplementary Products
- 7.4.1 SAP Interactive Forms by Adobe, Enable the Enterprise (includes 40 Interactive Forms) ("Adobe EE"). The total number of SAP Named Users licensed to Use SAP Software may never exceed the License Level for Adobe EE, i.e. all licensed SAP Named Users must contribute to the calculation of the license fee for Adobe EE.
- 7.4.2 Additional Interactive Forms Bundle(s) for Adobe EE or Adobe, Individual User ("Adobe EE and IU") (40 Forms per Additional Interactive Forms Bundle). Only individuals licensed to Use Adobe EE or IU are permitted to Use the licensed Additional Interactive Forms Bundles for Adobe EE or IU (if any).
- 7.4.3 SAP Interactive Forms by Adobe, External Users ("Adobe EU"). Only those individuals who are licensed to Use specific SAP Software without the requirement of an SAP Named User license may Use licensed Adobe EU, and such Use (of Adobe EU) shall be solely in conjunction with, and to the extent of, such individual's license to Use such specific SAP Software without the requirement of an SAP Named User license. For avoidance of doubt, no one licensed as an SAP Named User may Use Adobe EU. External users get access to 40 forms or the number of forms licensed for Adobe EE/ Adobe IU if greater than 40.
- 7.4.4 SAP Information Interchange by Crossgate ("IIC") and Web Based Connectivity Option ("WBC"). A valid license of IIC is a pre-requisite for licensing and Using WBC. WBC has to be licensed in accordance with the minimum quantities stated in the price list and require IIC licenses as a prerequisite. Notwithstanding where IIC, or ICC with WBC, is licensed with a runtime database pursuant to an Order Form, a separate MySQL database is still required (in addition to the licensed runtime database) as follows: (i) the Crossgate software licensed hereunder currently requires a MySQL database product, which is a third party product which has either been integrated or pre-installed as part of the Crossgate software, or which must be installed to Use the Crossgate software; (ii) if integrated in the licensed Crossgate software, the integrated MySQL database product functionality may differ from that of a non-integrated MySQL database product; (iii) this Attachment does not contain a license to use the MySQL database, even where integrated or pre-installed as part of the licensed Crossgate software; (iv) the MySQL database product is subject to its respective vendor license agreement; (v) SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained from a third party by Ordering Activity; and (vi) Ordering Activity is responsible for support and maintenance of any database product obtained from a third party supplier, and SAP has no responsibility in this regard.
- 7.4.5 SAP LoadRunner by HP ("LR"). Ordering Activity's Use of the LR software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) only in quality assurance and similar non-production environments, and may only be Used on a single server.
- 7.4.6 SAP LoadRunner by HP, Performance Center with Diagnostics ("LR PCD"). Ordering Activity's Use of the LR PCD software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the LR PCD software Documentation specifies that the licensed LR PCD software is prescribed for testing and monitoring such other pre-production software) only in quality assurance and similar non-production environments. Use of the Diagnostics for Composite Applications component ("Diagnostics") included with LR PCD is (i) subject to the forgoing Usage limitation and (ii) further limited to Use with a single Application Instance (as defined below) for every two hundred fifty (250) Virtual Users of LR PCD licensed. "Application Instance" means a monitored, non-production environment running an instance of an application (e.g. an instance of SAP Software, a java virtual machine or a database server counts as one Application Instance).
- 7.4.7 SAP LoadRunner by HP, Performance Center without Diagnostics ("LR PC"). Ordering Activity's Use of the LR PC software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software's associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the LR PC software Documentation specifies that the licensed LR PC software is prescribed for testing and monitoring such other pre-production software) only in quality assurance and similar non-production environments.

- 7.4.8 SAP Quality Center by HP, Enterprise Edition (“QC EE”). Ordering Activity’s Use of the QC EE software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software’s associated operating systems, databases, application servers, etc), and, if the applicable Order Form indicates that QC EE is licensed for “Full Use”, Ordering Activity’s Use of the QC EE software shall also include the right to test or monitor any other pre-production software (so long as the QC EE software Documentation specifies that the licensed QC EE software is prescribed for testing and monitoring such other pre-production software), all in quality assurance and similar non-production environments only. The QC EE Bundle currently includes the SAP Quality Center by HP, Enterprise Edition – QuickTest Professional, TestDirector, Business Process Testing, Requirements Management, and Defects Management components.
- 7.4.9 SAP Quality Center by HP, Premier Edition (“QC PE”). Ordering Activity’s Use of the QC PE software is limited solely to testing or monitoring pre-production SAP Software (including any and all software required to operate the particular SAP Software, further including the SAP Software’s associated operating systems, databases, application servers, etc) or any other pre-production software (so long as the QC PE software Documentation specifies that the licensed QC PE software is prescribed for testing and monitoring such other pre-production software), all in quality assurance and similar non-production environments only. The QC PE Bundle currently includes the SAP Quality Center by HP, Premier Edition – QuickTest Professional, TestDirector, Business Process Testing, Requirements Management, and Defects Management components.
- 7.4.10 SAP Regulatory Report by iBS, Accounts; SAP Regulatory Report by iBS, Derivatives; SAP Regulatory Report by iBS, P/C/S Cashflow; SAP Regulatory Report by iBS, Retail Cashflow. Licensed iBS software may only be Used to support Ordering Activity’s German, Austrian and/or Swiss business operations.
- 7.4.11 Metadata Management Multi-Source Integrators by MITI (CPU). The total number of CPUs of SAP BusinessObjects Metadata Management (CPU) licensed under appendices to this Attachment may never exceed the License Level for the MITI Software licensed above.
- 7.4.12 SAP Employee File Management by OpenText (“EFM”). An individual licensed to Use EFM must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User. EFM contains a limited use license of SAP Document Access by OpenText that can only be used in conjunction with the EFM solution to manage employee related documents. Broader usage of Document Access would require separate licensing of that solution.
- 7.4.13 SAP Digital Asset Management by OpenText (“xECM”). An individual licensed to Use DAM must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User.
- 7.4.14 SAP Extended ECM by OpenText (“xECM”). An individual licensed to Use xECM must be licensed (under separate Order Form to the Schedule Contract) as an SAP Business Expert, Professional, Limited Professional, Business Information, Employee or Employee Self-Service, or Solution Extension User.
- 7.4.15 SAP Document Access by OpenText (“DA”) and **SAP Document Access by OpenText for POS Device (“DA for POS“)**. An individual licensed to Use DA for SAP Business Expert, Professional and Limited Professional Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User. An individual licensed to Use DA for SAP Business Information, Employee and Employee Self-Service Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Information, Employee or Employee Self-Service User. DA may not be Used to archive and/or view any data and/or documents originating from a point-of-sale device. DA for POS may only be Used by individuals licensed as SAP Named Users (under separate Order Form to the Schedule contract, and in accordance with each individual’s respective SAP Named User type) to archive and/or view data and/or documents originating from a point-of-sale device. .
- 7.4.16 SAP Archiving by OpenText (“Archiving”). An individual licensed to Use Archiving for SAP Business Expert, Professional and Limited Professional Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User. An individual licensed to Use Archiving for SAP Business Information, Employee and Employee Self-Service Users must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Information, Employee or Employee Self-Service User.
- 7.4.17 SAP Invoice Management by OpenText (“IM”). An individual licensed to Use OCR must also be licensed for IM. The OCR is an optional component and there must be at least as many IM licenses as OCR licenses but there can be more IM licenses than OCR license.
- 7.4.18 SAP Dispatching & Planning – Long Term Planning by Prologa; SAP Dispatching & Planning – Operational Planning by Prologa; SAP Legal Requirements by Prologa. An individual licensed to Use any Prologa must be licensed (under separate Order Form to the Schedule contract) as an SAP Business Expert, Professional or Limited Professional User.
- 7.4.19 SAP Central Process Scheduling by Redwood. The license for each process server includes the right to Use the Redwood Software on one each of the following systems: (1) a training system, (2) a test / QA system and (3) a backup / failover system for such process server.
- 7.4.20 SAP User Experience Management by Knoa and SAP User Experience Management by Knoa, version for SAP GUI. SAP User Experience Management by Knoa and SAP User Experience Management by Knoa, version for SAP GUI (collectively,

“Knoa”) may be embedded or bundled with the following SAP Business Objects Software: SAP Business Objects Enterprise Premium, WebIntelligence, Xcelsius Enterprise, Xcelsius Enterprise Interactive Viewing (“Runtime Software”). Such Runtime Software may only be Used to access data created or enhanced by Knoa. Runtime Software may not be combined in the same Deployment as SAP BusinessObjects Software licensed independently from Knoa.

7.4.21 BSI U.S. Payroll Tax Processing. The BSI software is licensed for Use in conjunction with the payroll functionality contained in the SAP Payroll Software, which must be separately licensed. In addition, the license for the BSI software is limited for Use on a single Platform at a time (with the exception of a Platform migration period as BSI may allow). For purposes herein, the term “Platform” shall mean a single BSI Supported Configuration of the following: a single database, single server, single client software, and single operating system. For purposes herein, “BSI Supported Configuration” shall mean a configuration for which BSI makes support available for SAP Ordering Activities of the BSI software. The BSI software license does not include a license to use any third party database, server, client software, or operating system. If Ordering Activity wishes to change the Platform: (i) Ordering Activity shall provide SAP written notice of the same and complete a Platform Change form (in a format acceptable to BSI); and (ii) SAP shall allow such change to the extent and under the conditions BSI generally makes available to SAP, including without limitation Ordering Activity’s payment of any platform change fees that apply.

7.4.22 Additional Third Party Product Terms Applicable to Standalone Use:

7.4.22.1 Metadata Management Multi-Source Integrators by MITI (CPU). SAP BusinessObjects Metadata Management (“BMM”) must be separately licensed by Ordering Activity for Standalone Use, and the total number of BMM CPUs licensed by Ordering Activity may never exceed the License Level for the MITI Software licensed above.

7.4.23 SAP Solution Extension Limited User. The SAP Solution Extension Limited User is solely authorized to Use one (1) third party solution licensed by SAP. The License Agreement needs to expressly specify this third party solution. The SAP Solution Extension Limited User applies to SAV if the assigned third party solution does.

7.4.24 RWD

For the following price list items the special term as described below does apply:
 SAP Productivity Pak by RWD – excl. North America (7009560)
 SAP Productivity Pak Help Launch Pad by RWD – excl. North America (7009561)
 SAP Productivity Composer by RWD – excl. North America (7009562)
 SAP Productivity Composer Help Launch Pad by RWD – excl. North America (7009563)
 SAP Productivity Pak by RWD – North America (7009639)
 SAP Productivity Pak Help Launch Pad by RWD – North America (7009640)
 SAP Productivity Composer by RWD – North America (7009641)
 SAP Productivity Composer Help Launch Pad by RWD – North America (7009642)

When RWD software is used with standalone SAP BusinessObjects solutions namely Knowledge Accelerator products or to create education offerings for SAP BusinessObjects solutions that do not interface with SAP solutions that require SAP Named Users, such users must be licensed to use SAP BusinessObjects solutions based on either the SAP BusinessObjects Named User or CPU metric and do not need to be licensed as SAP Named User.

The amount of licensed “user” sales units for the SAP Productivity Pak by RWD or SAP Productivity Composer by RWD must match at least the total number of the licensed Named Users for the SAP BusinessObjects Knowledge Accelerator solutions, provided the SAP BusinessObjects Knowledge Accelerator is licensed along with the RWD solutions. SAP BusinessObjects Knowledge Accelerator may be licensed in the Named User or CPU capacity.

7.4.25 SAP Extended Enterprise Content Management by OpenText. SAP Application Named users are applicable. SAP Solution Extension Limited User can be licensed if qualified.

7.4.26 SAP Multiresource Scheduling, SAP Multiresource Scheduling with Optimizer, SAP Public Budget Formulation, SAP Intercompany Data Exchange for German Metering, SAP Payment Engine, SAP Pricing and Costing for Utilities, SAP Connector to eBAgent, SAP Business Process Tracking for Utilities, SAP Application Interface Framework. Special terms & conditions apply. Details on language availability, technical prerequisites to install and to use these SAP Applications, support periods and further terms & conditions can be found at <http://service.sap.com/fbs/availability>.

7.4.27 SAP Real-Time Offer Management (Agent-Assisted Channel), SAP Real-Time Offer Management (Self-Service Channel). Special terms & conditions apply. Details on language availability, technical prerequisites to install and to use these SAP Applications, support periods and further terms & conditions can be found at <http://service.sap.com/fbs/availability>.

7.4.28 SAP Business Communication Management (BCM), Rapid Deployment Edition

The usage of SAP Business Communication Management application under this license is restricted to as follows:

Inbound Contact Center is permitted; no Outbound Contact Center and no Enterprise Telephony.

Contact channels are limited to the Voice channel only and without Call-back channel while Software-based Interactive Voice Response (IVR) is limit to 1 port per 2 agents

The Use of the following agent tools are not permitted: IP-desk-phone, Integration to MS Outlook, Switchboard operator tools, Server side recording, Contact Classification Tools, Task Management, Auto Manual Task creation, Task Classification, Task Alarm, monitoring and reporting, Messenger Tools and Outbound dialler softphone.

A Maximum of one supervisor per five agents is allowed, The Use of the following supervisor tools is not permitted: Chat with Agents, Message broadcasting and outbound campaign management.
 The Use of the following Contact Routing and IVR Tools is not permitted: Skills-based routing, Preferred/last served agent routing, Personal queues, Email routing based on key words and Least cost-based routing.
 The Use of Task Handling reports are not permitted.
 The usage of Mobile Communication Mobile Client (CMC) is not permitted.

- 7.4.29 SAP CRM Rapid Deployment Edition. Ordering Activity's Use of SAP CRM Rapid Deployment Edition is limited to accessing the following functionality within SAP CRM: Segmentation & List Management, Lead Management, Opportunity Management, Sales Performance Management, Customer Service & Support, Campaign Management and Accounts and Contact Management. Ordering Activity's Use of the functionality specified herein is limited solely to accessing SAP CRM components. Ordering Activity is entitled to Use SAP NetWeaver Mobile Gateway but only to the extent such Use is required to access the functionality specified herein. Use of other mobile applications may require additional license fees.
- 7.4.30 SAP SRM Rapid Deployment Edition. The SAP SRM Rapid Deployment Edition is based on the SAP SRM application. The SAP SRM Rapid Deployment Edition package enhances the Enterprise Foundation Package by Strategic Sourcing with Request for Quotation. The SAP SRM Rapid Deployment Edition has to be installed as an Add-on in an ERP system using the classic technical scenario.
- 7.4.31 SAP Information Interchange by Crossgate. SAP Information Interchange by Crossgate requires a mySQL database, which needs to be licensed directly from the respective vendor.
- 7.4.32 SAP Interactive Forms by Adobe, external users. External users get access to 40 forms or the number of forms licensed for Enable the License/Individual user if greater than 40.
- 7.4.33 SAP Workforce Scheduling & Optimization by ClickSoftware - Realtime Service. The bundle provides out of the box integration with Pitney Bowes Business Insight-MapInfo, PTV and Microsoft Bing. Each map provider requires a valid license, which needs to be purchased separately. Additional custom integrations with other mapping providers (e.g. ESRI) are possible.
- 7.4.34 SAP BusinessObjects Predictive Workbench by IBM (PW). PW may only be Used with SAP Software, which must be licensed separately by Ordering Activity. All output from PW is restricted to distribution and Use within PW (or export sources provided within PW) and/or Ordering Activity's licensed SAP Software. Notwithstanding anything to the contrary, for every three (3) users of PW licensed, Ordering Activity shall have the right to deploy the PW server components on one (1) CPU. PW may only be installed, deployed and/or hosted at a Ordering Activity or an authorized Affiliate's facility.
- 7.4.35 SAP Object Event Repository. SAP Object Event Repository includes use-rights of Auto-ID Infrastructure (All) capabilities; however those capabilities can only be used in conjunction with SAP Object Event Repository. Stand-alone use based on this license is not allowed

8. SYBASE Portfolio Products.

8.1 Sybase Product Specific Terms / Use Rules

The Sybase Software licensed hereunder may include certain third party open source and/or other free download components (collectively, the "Free Download Components"). Please refer to <http://www.sybase.com/thirdpartylegal> for certain notices relating to the Free Download Components.

8.2 Package Restrictions for Sybase Products.

8.2.1 Sybase Unwired Platform ("SUP"). SUP includes a runtime license of Sybase SQL Anywhere, Mobilink, and Ultralite.. These runtime products can be Used solely in conjunction with the Usage of SUP.

8.2.2 SUP Additional Application Connections. Additional Application Connections may only be Used by individuals who are also licensed as SUP Users. Each additional Application Connection licensed shall be added to the aggregate total of Application Connections that may be made by individuals who are also licensed as SUP Users.

8.2.3 Sybase Afaria Handheld Device Management from SAP (Afaria HDM) and/or Sybase Unwired Platform (SUP) & Afaria Handheld Device Management from SAP (Afaria HDM)

8.2.3.1 Afaria HDM license includes the following components, for Use solely on or with handheld devices: Afaria Enterprise Server including Multi-tenancy, Afaria Channel Test/Dev Server, Afaria Session Mgr for Handheld Devices, Afaria Software Mgr for Handheld Devices, Afaria Document Mgr for Handheld Devices, Afaria Security Mgr for Handheld Devices, Afaria Configuration Mgr for Handheld Devices, Afaria Inventory Mgr for Handheld Devices, Afaria OMA DM Client for Handheld Devices, and Afaria Backup Manager for Handheld Devices.

8.2.3.2 Use of each non-productive, test and development installation of Afaria HDM shall not exceed ten (10) Afaria HDM Users or ten (10) SUP & Afaria HDM Users. However, there is not a limit on the number of test and development installations provided the number of licensed Afaria HDM Users or SUP & Afaria HDM Users (as applicable) is not exceeded.

- 8.2.3.3 Afaria HDM Users. Any individual Using Afaria HDM must be licensed (i) as an Afaria HDM User or SUP & Afaria HDM Users and (ii) also as an SAP Named User (under separate Order Form to the Schedule contract), and such individual's Use of Afaria HDM shall be subject to such individual's SAP Named User type and the applicable License Level for Afaria HDM or SUP & Afaria HDM.
- 8.2.4 Sybase Afaria Laptop Management from SAP (Afaria LM)
- 8.2.4.1 Afaria LM license includes the following components, for Use solely on or with laptops: Afaria Enterprise Server including Multi-tenancy, Afaria Channel Test/Dev Server, Afaria Session Mgr for Laptop Management, Afaria Document Mgr for Laptop Management, Afaria Software Mgr for Laptop Management, Afaria Backup Mgr for Laptop Management, and Afaria Patch Mgr for Laptop Management.
- 8.2.4.2 Use of each non-productive, test and development installation of Afaria LM shall not exceed ten (10) Afaria LM Users. However, there is not a limit on the number of test and development installations provided the number of licensed Afaria LM Users is not exceeded.
- 8.2.4.3 Afaria LM Users. Any individual Using Afaria LM must be licensed (i) as an Afaria LM User and (ii) also as an SAP Named User (under separate Order Form to the Schedule contract), and such individual's Use of Afaria LM shall be subject to such individual's SAP Named User type and the Afaria LM License Level.
- 8.2.5 Advanced Security Option; Unstructured Data Analytics Option; Multiplex Grid Option; Very Large Database Management Option (VLDB)
Advanced Security Option; Unstructured Data Analytics Option; Multiplex Grid Option; Very Large Database Management Option (VLDB) requires the licensing of Sybase IQ Enterprise Edition.
- 8.2.6 Sybase ASE. Sybase Adaptive Server Enterprise ("ASE") is a runtime database licensed for use by individuals licensed as SAP Named Users solely in conjunction with their use of applicable Software and/or Third Party Software licensed by Ordering Activity from SAP. The Sybase ASE runtime database may not be used to run any software and/or third party software other than applicable Software and/or Third Party Software licensed by Ordering Activity from SAP. For purposes of clarification, see the applicable Software and/or Third Party Software Documentation for information regarding release(s) / version(s) supported on the Sybase ASE runtime database.
- 8.2.7 DB2 Runtime Database in Certain Sybase Licensing Scenarios. Notwithstanding anything to the contrary, the Afaria HDM and Afaria LM Software, if licensed hereunder, may require a database product in addition to any runtime database that may be licensed hereunder. The Attachment does not contain a license to use any database product other than one identified in the Attachment. SAP makes no representations or warranties as to the terms of any license or the operation of any database product obtained (i.e. licensed) directly from a third party vendor by Ordering Activity, and Ordering Activity is responsible for support and maintenance of any database product obtained (i.e. licensed) from a third party vendor, and SAP has no responsibility in this regard.
- 8.2.8 SAP Enterprise Integrations for Mobile Apps Software.
- 8.2.8.1 The SAP Enterprise Integration for Mobile Apps Software may require an additional component downloaded from a third party mobile application store. Each additional component is subject to its respective license agreement. In addition, the following terms apply to specific Software:
- 8.2.8.2 SAP Enterprise Integrations for Mobile Apps. For the SAP Enterprise Integration Mobile Apps listed below, in addition to fulfilling the underlying SAP Named User license requirement, access to the licensed Enterprise Integrations for Mobile Apps requires one of the following (i) an SAP NetWeaver Gateway license and SUP User license; (ii) an SAP NetWeaver Gateway license and an SUP & Afaria HDM User license; or (iii) SAP Mobile Platform User license.

SAP Enterprise Integration for ERP Quality Issue Mobile App

SAP Enterprise Integration for Employee Lookup Mobile App

SAP Enterprise Integration for Leave Request Mobile App

SAP Enterprise Integration for Travel Receipt Capture Mobile App

SAP Enterprise Integration for Travel Expense Approval Mobile App

SAP Enterprise Integration for HR Approvals Mobile App

SAP Enterprise Integration for Cart Approval Mobile App

SAP Enterprise Integration for Timesheet Mobile App

SAP Enterprise Integration for Sales Order Notification Mobile App

SAP Enterprise Integration for Customer and Contacts Mobile App

SAP Enterprise Integration for Material Availability Mobile App

SAP Enterprise Integration for ERP Order Status Mobile App

SAP Enterprise Integration for GRC Access Approver Mobile App

SAP Enterprise Integration for GRC Policy Survey Mobile App
SAP Enterprise Integration for Payment Approvals Mobile App
SAP Enterprise Integration for Customer Financial Fact Sheet Mobile App
SAP Enterprise Integration for Interview Assistant Mobile App
SAP Enterprise Integration for Transport Notification and Status Mobile App
SAP Enterprise Integration for Transport Tendering Mobile App
SAP Enterprise Integration for Manager Insight Mobile App
SAP Enterprise Integration for Electronic Medical Record on iPad Mobile App

- 8.2.8.3 Sybase Mobile Workflow Enterprise Integration for SAP, Sybase Mobile Sales Enterprise Integration for SAP CRM, SAP Enterprise Integration for Retail Execution Mobile App, SAP Enterprise Integration for Field Service Mobile App, SAP Enterprise Integration for EAM Work Order Mobile App. The referenced Enterprise Integrations for Mobile Apps include a runtime license of SAP NetWeaver Mobile Gateway and Use of such runtime product is limited solely to enable Ordering Activity's Usage of the licensed Enterprise Integrations for Mobile App. In addition to fulfilling the underlying SAP Named User license requirement, each Enterprise Integration Mobile App User must also be licensed as an SUP User, an SUP & Afaría HDM User or SAP Mobile Platform User.
- 8.2.8.4 SAP Enterprise Integration for Citizen Connect Mobile App. In addition to fulfilling the underlying SAP Named User license requirement, Use of the licensed SAP Enterprise Integration for Citizen Connect Mobile App requires a license of SAP NetWeaver Gateway or SAP Mobile Platform User.
- 8.2.9 SAP Mobile Platform. Each SAP Mobile Platform User license is comprised of one (1) Sybase Unwired Platform (SUP) & Afaría Handheld Device Management from SAP (Afaría HDM) User license. Each component comprising the SAP Mobile Platform is subject to the applicable terms stated in the Software Use Rights document. Each such SAP Mobile Platform User may Use SAP NetWeaver Gateway as follows: each SAP Mobile Platform User is licensed to Use SAP NetWeaver Gateway provided with the SAP Mobile Platform for the sole purpose of enabling (i) any SAP Mobile Applications, as set forth on <http://www.sap.com/mobile>, and licensed by Ordering Activity under this Attachment A on a per user basis, solely to interface with the Software and/or third party software licensed under this Attachment and/or (2) any Ordering Activity owned/licensed mobile applications, solely to interface with the Software and/or third party software licensed under this Attachment via SUP. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license.
- 8.2.10 SAP Mobile Platform for Consumers. Each SAP Mobile Platform for Consumer User license is comprised of Sybase Unwired Platform (SUP) & and SAP Netweaver Gateway. Each component comprising the SAP Mobile Platform for Consumers is subject to the applicable terms stated in the Software Use Rights document. Each such SAP Mobile Platform for Consumer User is licensed to Use SAP NetWeaver Gateway provided with the SAP Mobile Platform for Consumers for the sole purpose of enabling (i) any SAP Mobile Applications, as set forth on <http://www.sap.com/mobile>, and licensed by Ordering Activity under this Attachment A on a per user basis, solely to interface with the Software and/or third party software licensed under this Attachment A and (2) any Ordering Activity owned/licensed mobile applications, solely to interface with the Software and/or third party software licensed under this Attachment A via SUP. Any other Use of SAP NetWeaver Gateway requires a separate SAP NetWeaver Gateway license. Ordering Activity may grant each licensed SAP Mobile Platform for Consumer User the right to make an unlimited number of Application Connections, and there is no requirement for an SAP Mobile Platform for Consumer User to also be licensed as an SAP Named User; and only an individual making Application Connections solely on his or her own behalf as an individual (i.e. not in conjunction with his or her employment or on behalf of any other individual(s) and/or entity(ies)) may be licensed as an SAP Mobile Platform for Consumer User.
- 8.2.11 SAP Mobile Platform Limited Runtime License. Ordering Activity is licensed to Use Sybase Unwired Platform and SAP NetWeaver Gateway ("Mobile Platform Runtime Components") with the licensed Software referenced at the web sites below, for the sole purpose of enabling Ordering Activity's usage of such licensed Software via interface with the Mobile Platform Runtime Components:
- (1) SAP Enterprise Integration for SAP Mobile Application; or
 (2) SAP Partner Certified Mobile Application
- both as stated at <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option/index.epx> or <http://www.sap.com/solutions/mobility/sap-mobile-platform-runtime-option-for-productivity-apps/index.epx>. Ordering Activity's Use of SAP NetWeaver Gateway as a Mobile Platform Runtime Component is solely via interface to SUP. Ordering Activity must license the necessary Users / Named Users for its Use of the licensed Software in accord with the Software Use Rights document. Each component comprising the Mobile Platform Runtime Components is subject to the applicable terms stated in the Software Use Rights document. In the event Ordering Activity Uses the Mobile Runtime Platform Components other than as specified in this paragraph, a separate full use license is required.

9. SAP HANA

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- 9.1 Definitions.
- 9.1.1 **Data Sources.** Any software product(s) and/or database instance(s) for which Ordering Activity has secured an appropriate license.
- 9.1.2 **Non-SAP Applications.** Any software and/or applications, other than Software or Third Party Software, for which Ordering Activity has secured an appropriate license from an entity other than SAP, SAP AG, and/or any of its/their subsidiaries and/or distributors.
- 9.2 Where SAP HANA Is Not Contractually Restricted to Standalone Use.
- 9.2.1 **SAP HANA, Platform Edition.** SAP HANA Platform may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level.
- 9.2.2 **SAP HANA, Enterprise Edition.** SAP HANA Enterprise may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level. SAP HANA Enterprise currently includes a runtime license of SAP Business Objects Data Integrator (“DI”) and SAP System Landscape Transformation (“SLT”), and Use of such runtime products shall be limited solely to extracting data from Data Sources into HANA.
- 9.2.3 **SAP HANA Extended Enterprise.** SAP HANA Extended Enterprise may be Used with an unlimited number of Data Sources, and such Use is subject to the applicable Licensed Level. SAP HANA Extended Enterprise currently includes a runtime license of SAP Business Objects Data Integrator (“DI”), SAP System Landscape Transformation (“SLT”), Sybase Replication Server (“SRS”), Sybase SQL Anywhere database (“SQL”) and Sybase Adaptive Server Enterprise (“ASE”), and Use of such runtime products shall be limited solely to (i) in the case of DI, SLT and SRS, extracting data from Data Sources into SAP HANA, (ii) in the case of SQL, serving as the database repository for SRS and (iii) in the case of ASE, serving as the database repository for DI and/or SRS (with respect to SRS, Ordering Activity may elect, in its discretion, to Use ASE rather than SQL). Notwithstanding anything to the contrary, Ordering Activity may not use SRS to directly or indirectly extract data from any Microsoft, Oracle, IBM Informix, IBM DB2 for z/OS, ASE, and/or MaxDB database product.
- 9.2.4 Named User Requirements Where SAP HANA Software Is Not Contractually Restricted to Standalone Use.
- 9.2.4.1 If an individual is Using licensed SAP HANA Software with a specific application that is licensed Software or Third Party Software and requires an SAP Named User license, then the SAP Named User license granting such individual the right to Use such specific application shall also fulfill the SAP Named User license requirement for Use of the licensed SAP HANA Software solely with such specific application, and such individual's Use of the licensed SAP HANA Software with such specific application shall be in accordance with the respective SAP Named User license.
- 9.2.4.2 If an individual is Using licensed SAP HANA Software with a specific application that is licensed Software or Third Party Software and does not require an SAP Named User license, then Use of the licensed SAP HANA Software solely with such specific application shall not require an SAP Named User license.
- 9.2.4.3 If an individual is Using licensed SAP HANA Software with Non-SAP Applications, then such individual must be licensed as an SAP Application HANA Administrator Use or an SAP Application HANA Viewer User, and such individual's Use of the licensed SAP HANA Software solely with such Non-SAP Applications shall be in accordance with the respective SAP Named User license.
- 9.2.4.4 Notwithstanding the foregoing, an SAP Named User license will not be required solely where (i) data is exported directly out of the licensed SAP HANA Extended Enterprise into Non-SAP Applications in an asynchronous, non-real-time manner and (ii) the use of such exported data in such Non-SAP Applications does not result in any updates to and/or trigger any processing capabilities of any licensed Software or Third Party Software. Notwithstanding anything to the contrary, if a runtime database is licensed for Use with the licensed SAP HANA Extended Enterprise Software, then Use of such runtime database to support the export of data from the licensed SAP HANA Enterprise Software in accordance with the immediately preceding sentence shall be limited to standard APIs provided with such runtime database.
- 9.3. Where SAP HANA Software Is Contractually Restricted to Standalone Use.
- 9.3.1 **Standalone Use of HANA Platform.** SAP HANA Platform may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level.
- 9.3.2 **Standalone Use of HANA Enterprise.** SAP HANA Enterprise may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level. SAP HANA Enterprise currently includes a runtime license of SAP Business Objects Data Integrator (“DI”) and SAP System Landscape Transformation (“SLT”), and Standalone Use of such runtime products shall be limited solely to extracting data from Data Sources into HANA.
- 9.3.3 **Standalone Use of HANA Extended Enterprise Enterprise.** SAP HANA Extended Enterprise may be Used with an unlimited number of Data Sources, such Use being subject to the Standalone Use restriction and the applicable Licensed Level. SAP HANA Extended Enterprise currently includes a runtime license of SAP Business Objects Data Integrator (“DI”), SAP System Landscape Transformation (“SLT”), Sybase Replication Server (“SRS”), Sybase SQL Anywhere database (“SQL”) and Sybase Adaptive Server Enterprise (“ASE”), and Standalone Use of such runtime products shall be

limited solely to (i) in the case of DI, SLT and SRS, extracting data from Data Sources into SAP HANA, (ii) in the case of SQL, serving as the database repository for SRS and (iii) in the case of ASE, serving as the database repository for DI and/or SRS (with respect to SRS, Ordering Activity may elect, in its discretion, to Use ASE rather than SQL). Notwithstanding anything to the contrary, Ordering Activity may not use SRS to directly or indirectly extract data from any Microsoft, Oracle, IBM Informix, IBM DB2 for z/OS, ASE, and/or MaxDB database product.

9.4 Named User Requirements Where SAP HANA Software Is Contractually Restricted to Standalone Use

- 9.4.1 If an individual is Using licensed SAP HANA Software that is contractually restricted to Standalone Use with a specific application that is licensed Software or Third Party Software (also contractually restricted for Standalone Use) and requires an SAP Named User license, then the SAP Named User license granting such individual the right to Use such specific application shall also fulfill the SAP Named User license requirement for Use of the licensed SAP HANA Software solely with such specific application, and such individual's Use of the licensed SAP HANA Software with such specific application shall be in accordance with the respective SAP Named User license.
- 9.4.2 If an individual is Using licensed SAP HANA Software that is contractually restricted to Standalone Use with (i) a specific application that is licensed Software or Third Party Software (also contractually restricted for Standalone Use) and does not require an SAP Named User license and/or (ii) Non-SAP Applications (subject to the contractual Standalone Use restriction), then such individual must be licensed as an SAP Application Standalone HANA Administrator User or an SAP Application Standalone HANA Viewer User, and such individual's Use of the licensed SAP HANA Software solely with such application(s) shall be in accordance with the respective SAP Named User license.
- 9.4.3 Notwithstanding the foregoing, an SAP Named User license will not be required solely where (i) data is exported directly out of the licensed HANA Extended Enterprise Software into Non-SAP Applications in an asynchronous, non-real-time manner and (ii) the use of such exported data in such Non-SAP Applications does not result in any updates to and/or trigger any processing capabilities of any licensed Software or Third Party Software.
- 9.5 SAP HANA DB Edition for SAP NetWeaver BW ("HANA DB for BW"). HANA DB for BW is a database licensed solely to support Ordering Activity's Use of SAP NetWeaver Business Warehouse (SAP BW) and Use is limited to communications between SAP BW and HANA DB for BW. HANA DB for BW may support an unlimited number of data sources (i.e. any software product(s) and/or database instance(s), for which Ordering Activity has secured an appropriate license), subject to the applicable Licensed Level. Any access to HANA DB for BW, including but not limited to data loading, modeling, reporting and distribution, must take place via SAP BW. HANA DB for BW may not be used as a database for any other purpose except as specified in this footnote. HANA DB for BW includes a runtime license of HANA Studio and access is solely to administer and manage HANA DB for BW. HANA DB for BW does not include a license for SAP BW. HANA DB for BW cannot be deployed on the same installation as any other SAP HANA software. The SAP Named User requirements for HANA Software apply to HANA DB for BW.
- 9.6 The Sybase runtime components included with HANA Extended Enterprise licensed hereunder may include certain third party open source and/or other free download components (collectively, the "Free Download Components"). Please refer to <http://www.sybase.com/thirdpartylegal> for certain notices relating to the Free Download Components.
10. Focused Business Solutions.
- 10.1 If licensed Software is identified as a Focused Business Solution ("FBS Software"), special support strategy and conditions apply. SAP Support for FBS Software shall be provided in accordance with the applicable SAP Support terms as amended by the then current support strategy and conditions found at <http://service.sap.com/fbs/availability> (inclusive of any successor site(s) made known by SAP, the "Strategy & Conditions Site").
- 10.2 The Strategy & Conditions Site is hereby amended to include the following terms:
- 10.2.1 FBS Software requires, as a prerequisite to its Use and installation, a specific version (e.g. release, service level pack, and/or enhancement pack) of certain SAP Software (the "Base Software"), which is identified on the Strategy & Conditions Site and must be separately licensed and installed by Ordering Activity.
- 10.2.2 In the future, should SAP elect, in its sole and exclusive discretion, to make new release(s) of FBS Software commercially available as part of SAP Support, such new release(s) may (a) differ functionally, (b) have different supported language(s) and/or (c) have different Base Software requirements from prior FBS Software release(s).
- 10.2.3 Mainstream and extended maintenance dates for FBS Software are targets, and therefore subject to change by SAP.
- 10.2.4 Maintenance and extended maintenance for any FBS Software release is contingent upon Ordering Activity remaining subscribed to, and current on, payment for maintenance for the applicable Base Software.
- 10.2.5 In no event will maintenance or extended maintenance for any FBS Software release be provided following the expiration or termination of mainstream or extended (as applicable) maintenance on the underlying Base Software.

Exhibit 4 - Pass Through Terms for Third Party Databases

SAP may deliver SAP software containing a database product where the end user is not entitled to use the database unless he/she has acquired the requisite number of licenses from the database vendor or its authorized distributor. Such deliveries are reported to the database vendor.

Conditions for the use of ORACLE® Database Software when licensed from SAP

1. Copyright

- 1.1 The comprehensive copyright to Oracle software is the sole property of the Oracle Corporation, Redwood Shores, CA, USA.
- 1.2 Third party database applications for system administration, monitoring and management may directly access the Oracle database.
- 1.3 The customer shall only use the Oracle software in connection with the SAP Software and only for the purposes of its own internal data processing which includes access of third party user such as contractor, supply chain vendor or supplier, customer, or third party individual authorized by the customer. It is allowed to customize the SAP software or to create additional functionality, new applications, or to support third party database applications which only interface with them (example: via RFC, BAPI) Third party database applications or new functionality or new applications which may directly access the Oracle database or indirectly access information contained therein are not allowed.
- 1.4 The customer shall assign the Oracle software only to wholly owned or majority owned subsidiaries. Assignment to competitors of Oracle is prohibited.
- 1.5 In view of its limited rights of use, the customer shall neither modify, decompile nor reverse engineer the Oracle software except and to the extent that it is expressly permitted by applicable law.
- 1.6 The Oracle software may only be used in the country or countries for which the customer has acquired a license. The customer hereby undertakes to adhere to all regulations of the US Department of Commerce and the American export authorities.
- 1.7 The use of Oracle software for the planning, production, control or monitoring of nuclear power stations, air traffic, means of mass transportation or medical equipment is not permitted, unless such use is limited to commercial or purely administrative applications.
- 1.8 The customer is not entitled to receive the source code for the Oracle software.

2. Other Conditions

- 2.1 The publication of benchmark tests for the Oracle software is not permitted.

Conditions for the Use of the Microsoft SQL-Server

Conditions for the Use of the Microsoft SQL-Server when licensed by SAP

For the purpose of this Section "Integrated Application" shall be defined as SAP software integrating the Microsoft SQL Server Database.

The Microsoft SQL Server Database may contain the following software:

"Server Software" provides services or functionality on your server (your computers capable of running the Server Software are "Servers");

"Client Software" allows an electronic device ("Device") to access or utilize the Server Software.

1. GRANT OF LICENSE.

This Third-Party Database is licensed and delivered to you solely for use as part of the SAP software. Contractor, through SAP, grants you the following rights to the Microsoft SQL Server Database, provided you comply with all of the terms and conditions of this license:

Installation -- Server Software. You may install and use one copy of the Server Software, as part of the SAP Software, on each single Server on which you install the Integrated Application.

SQL Server, Enterprise Edition. If you have acquired the Enterprise Edition of the Server Software, which must be indicated on your license to use the SAP software, you may install any number of instances of the Server Software on that Server. An "instance" shall mean a running copy of the Server Software.

Client Software. You may install the Client Software (SQL Server Personal Edition) on any internal Device, provided that you acquire the access license rights required for each use of the Integrated Application utilizing the Client Software on such Device as specified below.

SQL Server Access Requirements. You may use the Client Software only to access, configure, administer, or otherwise use the Server Software in conjunction with and as part of the SAP Software. You must acquire a Third-Party Database access license right for each use of any Device that:

- accesses or otherwise utilizes the services of the Server Software (including Devices using MSDE for such access), or
- installs and uses SQL Server Personal Edition, or
- uses the Management Tools, Books-Online, and Development Tools components of Microsoft SQL Server (collectively "Tools"). You may only use the Tools for internal use in conjunction with your Server Software.

Reservation of Rights. SAP and Microsoft reserve all rights not expressly granted to you in this license.

Benchmark Testing. You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Windows components.

Downgrades. Instead of installing and using the Server Software, you may install and use an earlier version of the Server Software in accordance with this license, provided that you completely remove such earlier version and install the original Server Software within a reasonable time. Your use of such earlier version shall be governed by this license, and your rights to use such earlier version shall terminate when you install the original Server Software.

Runtime-Restricted Use Software. This Microsoft SQL Server Database is "Runtime-Restricted Use" software; as such, the Microsoft SQL Server Database may only be used to run the SAP Application. The Microsoft SQL Server Database may not be used either (i) to develop any new software applications, (ii) in conjunction with any software applications, databases or tables other than those contained in the SAP Software, and/or (iii) as a standalone software application. The foregoing provision, however, does not prohibit you from using a tool to run queries or reports from existing tables, and/or from using a development environment or workbench which is part of the SAP Software to configure or extend such SAP Software.

2. SCOPE OF LICENSE.

The software is licensed, not sold. This agreement only gives you some rights to use the software. SAP and Microsoft reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For more information, see www.microsoft.com/licensing/userights. You may not:

- work around any technical limitations in the software;
- reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy;
- rent, lease or lend the software; or
- use the software for commercial software hosting services.

Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

3. NO HIGH RISK USAGE.

The Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. You may not use the Products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include, but are not limited to:

- aircraft or other modes of human mass transportation,
- nuclear or chemical facilities,
- life support systems,
- implantable medical equipment,
- motor vehicles, or
- weaponry systems.

High Risk Use does not include utilization of Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

4. TRANSFER – Internal.

You may move the Server Software to a different Server, provided that it is removed from the Server from which it is transferred and provided that it is transferred as part of the Integrated Application.

Transfer to Third Party. The initial user of the Microsoft SQL Server Database may make a one-time transfer of the Third-Party Database to another end user, provided that it is transferred as part of the SAP Software. The transfer has to

include all component parts, media, printed materials, this license, and if applicable, the Certificate of Authenticity. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Microsoft SQL Server Database must agree to all the license terms.

5. **LIMITATION ON REVERSE ENGINEERING, DECOMPILED, AND DISASSEMBLY.**
You may not reverse engineer, decompile, or disassemble the Microsoft SQL Server Database, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.
6. **TERMINATION.**
Without prejudice to any other rights, Licensor may cancel this license if you do not abide by the terms and conditions of this license, in which case you must destroy all copies of the Microsoft SQL Server Database and all of its component parts.
7. **EXPORT RESTRICTIONS.**
You acknowledge that Software is subject to U.S. export jurisdiction unless otherwise indicated by Microsoft. You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
8. **U.S. GOVERNMENT LICENSE RIGHTS.**
All Microsoft SQL Server Databases provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Microsoft SQL Server Databases provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.
9. **COPYRIGHT and OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES**
The Microsoft SQL Server Database is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Microsoft SQL Server Database. The Microsoft SQL Server is licensed, not sold.
10. **NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. SAP HAS INDEPENDENTLY DETERMINED HOW TO USE THE MS SQL SERVER DATABASE IN THE INTEGRATED APPLICATION THAT IT IS LICENSING TO YOU, AND MICROSOFT HAS RELIED ON SAP TO CONDUCT SUFFICIENT TESTING TO DETERMINE THAT THE MS SQL SERVER DATABASE IS SUITABLE FOR SUCH USE.**
11. **NO WARRANTIES BY MICROSOFT. YOU AGREE THAT IF YOU HAVE RECEIVED ANY WARRANTIES WITH REGARD TO EITHER (A) THE MS SQL SERVER DATABASE, OR (B) THE INTEGRATED APPLICATION, THEN THOSE WARRANTIES ARE PROVIDED SOLELY BY SAP AND DO NOT ORIGINATE FROM, AND ARE NOT BINDING ON, MICROSOFT.**
12. **NO LIABILITY OF MICROSOFT FOR CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE MS SQL SERVER DATABASE OR THE INTEGRATED APPLICATION. THIS LIMITATION WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY AMOUNT IN EXCESS OF TWO HUNDRED FIFTY U.S. DOLLARS (US\$250.00).**
13. **SEVERABILITY.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will continue in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.

Conditions for the Use of the Microsoft SQL-Server when previously licensed by Microsoft or Microsoft Distributor

The SAP software containing a copy of the Microsoft SQL-Server, which has been integrated or installed as a component of this SAP software. All Microsoft products are subject to the terms of the Microsoft License Agreement with end users which is included in the software package or the license agreements shipped with the Microsoft SQL-Server. An exception hereto is that the functionality of a Microsoft product as an integrated part of an SAP solution can differ from the functionality of a non-integrated Microsoft product. All inquiries relating to the functionality or performance of the SAP solution with Microsoft products should therefore be addressed to SAP and not to Microsoft. The SAP product does not contain a license for the integrated Microsoft product. You are therefore not entitled to use the copy of the Microsoft SQL-Server contained in this product and you will not receive a license for such use unless you have acquired or otherwise have at your disposal the same number of client/server licenses as user licenses acquired for the SAP software. By concluding this contract with SAP you represent and warrant that you have previously acquired a Microsoft license for SQL-Server end users and to conclude a corresponding license agreement.

When SAP delivers an updated version of the SAP software containing an updated version of the integrated Microsoft product, the end user is not entitled to use the updated version of the Microsoft product unless he/she has acquired the requisite number of client/server licenses from an authorized Microsoft distributor.

Conditions for Use of Sybase ASE

SAP is licensing Sybase ASE as a runtime license for Software licensed by SAP. A full use license for Sybase ASE is available from Sybase directly.

Ordering Activity shall only use the Sybase ASE in connection with the Software licensed for the Use with Sybase ASE and only for the purposes of its own internal data processing which includes access of third party user such as contractor, supply chain vendor or supplier, customer, or third party individual authorized by the customer. Ordering Activity may not Use Sybase ASE with any non-SAP branded or custom developed applications.

Third party database applications for system administration, monitoring and management may directly access Sybase ASE.

Third party database applications or new functionality or new applications which may directly access the Sybase ASE or indirectly access information contained therein are not allowed.

The foregoing provision, however, does not prohibit you from using a development environment or workbench which is part of the SAP Software to configure or modify the SAP software for which the database is licensed.

Exhibit 5 - Pass Through Terms for Address Directories

1. Reserved.
2. Reserved.
3. Reserved

4. GERMANY ADDRESS DIRECTORY (DEUTSCHE POST DIREKT):Reserved.

5. GEOCODING FOR US BY NAVTEQ, GEOCODING FOR CANADA BY NAVTEQ, GEOCODING FOR FRANCE BY NAVTEQ

(NAVTEQ):

The data ("Data") is provided for Ordering Activity's internal use only and not for resale. It is protected by copyright, and is subject to the following terms and conditions which are agreed to by you, on the one hand, NAVTEQ and NAVTEQ Suppliers on the other hand.

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Scope of Use. Ordering Activity agrees to use this Data together with SAP Applications solely for your internal business operations purposes for which Ordering Activity was licensed, and not for service bureau, time-sharing or other similar purposes. Accordingly, but subject to the restrictions set forth in the following paragraphs, Ordering Activity may copy this Data only as necessary for Ordering Activity's business use to (i) view it, and (ii) save it, provided that Ordering Activity does not remove any copyright notices that appear and do not modify the Data in any way. Ordering Activity agrees not to otherwise reproduce copy, modify, decompile, disassemble or reverse engineer any portion of this Data, and may not transfer or distribute it in any form except to your affiliates, for any purpose, except to the extent permitted by mandatory laws. Multi-disc sets may only be transferred or sold as a complete set as provided by SAP and not as a subset thereof.

Restrictions. Except where Ordering Activity has been specifically licensed to do so by SAP, and without limiting the preceding paragraph, Ordering Activity may not (a) use this Data with any products, systems, or applications installed or otherwise connected to or in communication with vehicles, capable of vehicle navigation, positioning, dispatch, real time route guidance, fleet management or similar applications; or (b) with or in communication with any positioning devices or any mobile or wireless-connected electronic or computer devices, including without limitation cellular phones, palmtop and handheld computers, pagers, and personal digital assistants or PDAs.

Warning. The Data may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.

No Warranty. This Data is provided to you "as is," and Ordering Activity agrees to use it at its own risk. NAVTEQ and NAVTEQ SUPPLIERS make no guarantees, representations or warranties of any kind, express or implied, arising by law or otherwise, including but not limited to, content, quality, accuracy, completeness, effectiveness, reliability, fitness for a particular purpose, usefulness, use or results to be obtained from this Data, or that the Data or server will be uninterrupted or error-free.

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INFRINGEMENT. Some States, Territories and Countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to you.

Disclaimer of Liability: NAVTEQ and NAVTEQ SUPPLIERS SHALL NOT BE LIABLE TO YOU: IN RESPECT OF ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ALLEGING ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, WHICH MAY RESULT FROM THE USE OR POSSESSION OF THE INFORMATION; OR FOR ANY LOSS OF PROFIT, REVENUE, CONTRACTS OR SAVINGS, OR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENCEE'S USE OF OR INABILITY TO USE THIS INFORMATION, ANY DEFECT IN THE INFORMATION, OR THE BREACH OF THESE TERMS OR CONDITIONS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF CLIENT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some States, Territories and Countries do not allow certain liability exclusions or damages limitations, so to that extent the above may not apply to Ordering Activity.

Government End Users. If the Data is being acquired by or on behalf of the United States government or any other entity seeking or applying rights similar to those customarily claimed by the United States government, the Data is a "commercial item" as that term is defined at 48 C.F.R. ("FAR") 2.101, is licensed in accordance with these Pass Through Terms, and each copy of Data delivered or otherwise furnished shall be marked and embedded as appropriate with the following "Notice of Use," and shall be treated in accordance with such Notice:

Notice of Use

Contractor (Manufacturer/ Supplier) Name: NAVTEQ

Contractor (Manufacturer/Supplier) Address: 425 W. Randolph Street, Chicago, Illinois 60606

This Data is a commercial item as defined in FAR 2.101 and is subject to these End-User Term under which this Data was provided.

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If Data for additional countries is included or distributed in connection with software products of SAP, or if Ordering Activity uses data from relevant countries the following supplier terms/copyright notices shall be included in the End-User Terms as applicable:

<u>Territory</u>	<u>Notice</u>
Australia (www.pasma.com.au).	"Copyright. Based on data provided under license from PSMA Australia Limited
Austria	"© Bundesamt für Eich- und Vermessungswesen"
Croatia, Cyprus, Estonia, Latvia, Lithuania, Moldova, Poland, Slovenia and/or Ukraine	"© EuroGeographics"
France	The following notice must appear on all copies of the Data, and may also appear on packaging:
	"source: © IGN 2009 – BD TOPO ®"
Germany	"Die Grundlagendaten wurden mit Genehmigung der zuständigen Behörden entnommen"
	or "Die Grundlagendaten wurden mit Genehmigung der zustaendigen Behoerden entnommen."
Great Britain	"Based upon Crown Copyright material."
Greece	"Copyright Geomatics Ltd."
Hungary	"Copyright © 2003; Top-Map Ltd."
Italy	"La Banca Dati Italiana è stata prodotta usando quale riferimento anche cartografia numerica ed al tratto prodotta e fornita dalla Regione Toscana."
Norway	"Copyright © 2000; Norwegian Mapping Authority"
Portugal	"Source: IgeoE – Portugal"
Spain	"Información geográfica propiedad del CNIG"
Sweden	"Based upon electronic data □ National Land Survey Sweden."
Switzerland	"Topografische Grundlage: □ Bundesamt für Landestopographie."

- 6. Reserved.
- 7. Reserved.
- 8. Reserved.
- 9. Reserved.

10. USPS SUITELINK:

- 1. Ordering Activity's right to use the CASS Certified Interface and the SuiteLink Product shall be strictly limited to use only within the United States of America;
- 2. Ordering Activity's right to use the CASS Certified Interface and the SuiteLink Product shall be strictly limited to improving business delivery addresses in multi-occupation buildings for use on letters, flats, postcards, packages, leaflets, magazines, postcards, advertisements, books, and other printed material, and any other item that will be delivered by USPS.

3. Ordering Activity have no right to sublicense, sell or otherwise distribute, reproduce, perform, or prepare derivative works of the Interface or the SuiteLink Product.
4. Ordering Activity acknowledges that:
 - a. the CASS Certified Interface and the SuiteLink Product under license from USPS;
 - b. You are a subOrdering Activity under SAP's license from USPS and obtain from Licensor no broader right than permitted under SAP's license agreement with USPS;
5. You shall be strictly limited to using the CASS Certified Interface and the SuiteLink Product only as a component of SAP's Data Quality or Data Services products.

11. USPS NCOALINK

1. Ordering Activity has no rights as to the NCOALink Interface under this agreement beyond using it as a component of Licensor's Data Quality and Data Services products in conjunction with the NCOALink data product to update a list, system, group or other collection of at least 100 unique names and addresses (herein "Mailing Lists") used for addressing letters, flats, postcards, packages, leaflets, magazines, advertisements, books and other printed material, and any other deliverable item handled by the United States Postal Service (herein "Deliverables") for delivery by the United States Postal Service (herein "USPS").
2. Ordering Activity has no right to develop or use any NCOALink product, service, interface, or any related item or technology to compile or maintain a list or collection of names and addresses or addresses only of new movers or to create other products or data bases or collections of information concerning new movers, histories of address changes, lists or histories of residents, or other informational or data sources based upon information received from or through the NCOALink data or technology for the purpose of renting, selling, transferring, disclosing, making available or otherwise providing such information to an entity unrelated to Ordering Activity.
3. For the purposes of communicating with addressees on Ordering Activity's Mailing Lists and for the purpose of record-keeping, however, Ordering Activity is permitted to retain updated addresses so long as not used in violation of paragraph 2 above, for individuals and entities with whom Ordering Activity has or had a business relationship, in connection with which Ordering Activity will use the updated address; however, these updated addresses may only be used by Ordering Activity and Ordering Activity may use them only for carrying out your organizational purposes in connection with that individual or entity and may not transfer, disclose, license or distribute to, or be used by any other entity or individual whatsoever.
4. No proprietary Mailing List that contains both old and corresponding updated address records, or any service product or system of lists that can be used to link old and corresponding updated address records, if updated by use of NCOALink, shall be rented, sold, transferred, disclosed, made available, or otherwise provided, in whole or in part to your customers or any other individual or entity.
5. Ordering Activity's right to use the NCOALink Interface is strictly limited to use only within the United States, its territories, and possessions.
6. As to the Interface, Ordering Activity has the right only to update Mailing Lists used to prepare Deliverables that will be deposited with the USPS.
7. Ordering Activity has no right to sublicense, sell, assign, or otherwise transfer rights in, reproduce, perform, attempt to improve, reverse engineer, modify or otherwise change, or prepare derivative works of the Interface. Any attempt to sublicense, sell, assign, or otherwise transfer rights in, or otherwise distribute the Interface shall be void.
8. Ordering Activity acknowledges that:
 - a. USPS owns the NCOALink data, technology, and system in its entirety including that used in the development of the Interface;
 - b. USPS owns and retains rights in the trademark of NCOALink and in the registered trademarks UNITED STATES POSTAL SERVICE®, POSTAL SERVICE®, US POSTAL SERVICE®, AND USPS® ;
 - c. SAP is providing the Interface as a component of its products to Ordering Activity solely for use with the NCOALink Product under a nonexclusive, limited distribution license from USPS; and
 - d. the rights Ordering Activity obtains in this license are derived from SAP's agreement with USPS and you obtain from SAP no broader right than SAP obtains from USPS, except as to Ordering Activity's specific right to use the NCOALink Interface to access the NCOALink data.
9. Ordering Activity is strictly limited to using the Interface only as a component of SAP's Data Quality and Data Services products.
10. Ordering Activity acknowledges and agrees that Ordering Activity has no right to sublicense, sell, distribute, reproduce, or display USPS trademarks or sell the Interface or other products under USPS's trademarks.

12. USPS SUBLICENSE AGREEMENTS:

DPV SUBLICENSE AGREEMENT

This Sublicense Agreement ("Sublicense") between Contractor and Ordering Activity sets forth additional terms required by the United States Postal Service ("USPS") regarding Ordering Activity's use of the DPV option with other SAP CASS certified software.

For purposes of this Sublicense, Delivery Point Validation ("DPV") means the new USPS proprietary technology product designed to help mailers validate the accuracy of address data, right down to the physical delivery point. The DPV process cannot assign a ZIP+4 Code nor will it respond to a non-ZIP+4 coded address.

1. Ordering Activity understands that the USPS provides the DPV Product through special licensing in order to protect the USPS' proprietary intellectual property and its compliance with restrictions of Title 39 USC § 412.
2. Ordering Activity acknowledges that the address information contained within the DPV Product is subject to Title 39 USC § 412. Ordering Activity shall take all steps necessary to secure the DPV Product in a manner that fully complies with Section 412 constraints prohibiting the disclosure of address lists.
3. Ordering Activity acknowledges that the DPV Product is confidential and the proprietary property of the USPS. Ordering Activity further acknowledges that the USPS represents that it is the sole owner of copyrights and other proprietary rights in the DPV Product.
4. Ordering Activity shall not use the DPV Product technology to artificially compile a list of delivery points not already in Ordering Activity's possession or to create other derivative products based upon information received from or through the DPV Product technology.
5. No proprietary Ordering Activity address list(s) or service products or other system of records that contain(s) address attributes updated through DPV processing shall be rented, sold, distributed or otherwise provided in whole or in part to any third party for any purpose containing address attributes derived from DPV processing. Ordering Activity may not use the DPV technology to artificially generate address records or to create mailing lists.
6. The DPV Product processing requires Ordering Activity to have access to address information that appears on mail pieces. To ensure the confidentiality of this address information, no employee or former employee of Ordering Activity may, at any time, disclose to any third party any address information obtained in the performance of this agreement. Ordering Activity agrees to control and restrict access to address information to persons who need it to perform work under this agreement and prohibit the unauthorized reproduction of this information. Due to the sensitive nature of the confidential and proprietary information contained in the DPV Product, Ordering Activity acknowledges that unauthorized use and/or disclosure of the DPV will irreparably harm the USPS' intellectual property. Therefore, Ordering Activity (i) agrees to reimburse the USPS for any unauthorized use and/or disclosure at a rate of treble (3 times) the current annual fee charged to Ordering Activity hereunder; and (ii) consents to such injunctive or other equitable relief as a court of competent jurisdiction may deem proper.
7. CONTRACTOR, SAP AND THE USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF DPV, OR FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY. IN NO EVENT SHALL SAP'S OR THE USPS' LIABILITY TO ORDERING ACTIVITY HEREUNDER, IF ANY, EXCEED THE PRO RATA PORTION OF THE ANNUAL LICENSE FEE FOR DPV.
8. Reserved.
9. Ordering Activity acknowledges that the USPS reserves the right to stop DPV processing in the USPS' sole discretion. SAP will not be liable or responsible for any decision the USPS makes in canceling Ordering Activity's Sublicense, including, but not limited to, arbitrating the cancellation decision on behalf of the customer. In the event the USPS cancels Ordering Activity's DPV processing, (i) Ordering Activity shall not be entitled to any refund or credit from SAP; and, (ii) SAP will discontinue shipping DPV directories to Ordering Activity.
10. Ordering Activity agrees that the USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine Ordering Activity's sites. USPS or its designated representatives shall have the right to examine, on or off Ordering Activity's premises, Ordering Activity's computer systems, processing files, documents, administrative records, and other materials to ensure Ordering Activity's compliance with the provisions of this agreement.
11. Ordering Activity further agrees that the USPS or its authorized representatives will, until three (3) years after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of Ordering Activity involving transactions related to this agreement.
12. Ordering Activity shall not export the DPV Product outside of the United States or its territories without prior written approval of the USPS.
13. This Sublicense shall be governed by the federal laws of the United States of America.
14. This Sublicense shall not be transferable, in whole or in part.
15. All obligations of Ordering Activity referred to in this Sublicense inure to the benefit of USPS.

13. USPS LACSLINK SOFTWARE SUBLICENSE

This Sublicense Agreement ("Sublicense") between Contractor and Ordering Activity sets forth additional terms required by the United States Postal Service ("USPS") regarding Ordering Activity's use of the LACSLink option with other CASS certified software.

1. For purposes of this document, the following terms shall be defined as set forth below:
 - "USPS" means the United States Postal Service.
 - "Deliverables" means letters, flats, postcards, packages, leaflets, magazines, postcards, advertisements, books, and other printed material, and any other item delivered by USPS.
 - "Interface" means one or more SAP interfaces developed for use with the LACSLink Product. "LACSLink Product" means the confidential and proprietary database concerning the conversion of existing addresses to their new or update or replacement address or the like, provide by USPS in a highly and uniquely secured environment.
2. Ordering Activity's right to use the Interface shall be strictly limited to use only within the geographic boundaries governed by the United States, its territories, and possessions, and only for updating addresses and mailing lists used to prepare Deliverables for deposit with USPS in conformance with USPS requirements
Ordering Activity shall have no right to sublicense, sell or otherwise distribute, reproduce, perform, or prepare derivative works of the Interface. Ordering Activity hereby acknowledges that:
 - USPS owns the LACSLink Product and USPS marks;
 - SAP provides the SAP product in part under license from USPS;
 - Ordering Activity is a Licensee under SAP's license from USPS and obtains from SAP no broader right than granted to SAP in such license from USPS;
 - Ordering Activity shall be strictly limited to using the Interface only as a component of the SAP product; and Ordering Activity agrees that it does not have a right to sublicense, distribute, reproduce, perform, display, or sell the Interface or USPS's marks.
3. CONTRACTOR, SAP AND THE USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF LACSLink, OR FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY. IN NO EVENT SHALL SAP'S OR THE USPS' LIABILITY TO ORDERING ACTIVITY HEREUNDER, IF ANY, EXCEED THE PRO RATA PORTION OF THE ANNUAL LICENSE FEE FOR LACSLink BASED ON THE EFFECTIVE DATE OF CANCELLATION WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF CANCELLATION.
4. Reserved
5. Ordering Activity acknowledges that the USPS reserves the right to stop LACSLink Product processing in the USPS' sole discretion. SAP will not be liable or responsible for any decision the USPS makes in canceling Ordering Activity's Sublicense, including, but not limited to, arbitrating the cancellation decision on behalf of the customer. In the event the USPS cancels Ordering Activity's LACSLink Product processing, (i) Ordering Activity shall not be entitled to any refund or credit from SAP; and, (ii) SAP will discontinue shipping LACSLink Product directories to Ordering Activity.
6. Ordering Activity agrees that the USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine Ordering Activity's sites. USPS or its designated representatives shall have the right examine, on or off SubOrdering Activity's premises, Ordering Activity's computer systems, processing files, documents, administrative records, and other materials to ensure Ordering Activity's compliance with the provisions of this agreement.
7. Ordering Activity further agrees that the USPS or its authorized representatives will, until three (3) years after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of Ordering Activity involving transactions related to this agreement.
8. Ordering Activity shall not export the LACSLink Product outside of the United States or its territories without prior written approval of the USPS.
9. This Sublicense shall be governed by the federal laws of the United States of America.
10. This Sublicense shall not be transferable, in whole or in part.
11. All obligations of Ordering Activity referred to in this Sublicense inure to the benefit of USPS.
14. DSF2 Interface (USPS Delivery Sequence File - DSF2)
 1. Ordering Activity has no rights as to the DSF2 Interface under this agreement beyond using it in conjunction with the DSF2 data product to update a list, system, group or other collection of addresses (herein "Mailing Lists") used for addressing letters, flats, postcards, packages, leaflets, magazines, advertisements, books and other printed material, and any other deliverable item handled by the United States Postal Service (herein "Deliverables") for delivery by the United States Postal Service (herein "USPS").
 2. Ordering Activity's right to use the DSF2 Interface is strictly limited to use only within the United States, its territories, and possessions.
 3. As to the Interface, Ordering Activity has the right only to sequence and/or update Mailing Lists used to prepare Deliverables that will be deposited with the USPS.

4. Ordering Activity has no right to sublicense, sell, assign, or otherwise transfer rights in, reproduce, perform, attempt to improve, reverse engineer, modify or otherwise change, or prepare derivative works of the Interface. Any attempt to sublicense, sell, assign, or otherwise transfer rights in, or otherwise distribute the Interface shall be void.
5. Ordering Activity acknowledges
 - a. that USPS owns the DSF2 data, technology, and system in its entirety including that used in the development of the Interface;
 - b. that USPS owns and retains rights in the trademark of DSF2 and in the registered trademarks UNITED STATES POSTAL SERVICE®, POSTAL SERVICE®, US POSTAL SERVICE®, AND USPS®;
 - c. that Licensee is providing the Interface to Ordering Activity solely for use with the DSF2 Product under a nonexclusive, limited distribution license from USPS; and
 - d. that the rights Ordering Activity obtains in this license are derived from Licensee's agreement with USPS and Ordering Activity obtains from Licensee no broader right than Licensee obtains from USPS, except as to Sublicensee's specific right to use the DSF2 Interface to access the DSF2 data.
6. Ordering Activity is strictly limited to using the Interface only with the DSF2 Product; and
7. Ordering Activity acknowledges and agrees that Ordering Activity has no right to sublicense, sell, distribute, reproduce, or display USPS trademarks or sell the Interface or other products under USPS's trademarks.

EXHIBIT 2 TO ATTACHMENT A - "PROFESSIONAL SERVICES SCHEDULE"

The parties agree that this Exhibit 2 is hereby annexed to and made a part of the Attachment A. WHEREAS, Ordering Activity licensed from Contractor the right to Use SAP Software pursuant to the Schedule Contract and Contractor, through SAP, provides, consulting and professional services ("Services") including support of installation and implementation of the licensed Software in the United States.

1. Services. Upon request by Ordering Activity, Contractor, through SAP, will provide a Consultant(s) to perform, at Ordering Activity's direction, consulting and professional services including support of installation and implementation of the applicable SAP Software ("Services"). Any Statement(s) of Work ("SOW") more fully describing the project assumptions, scope, duration and fees for the Services shall reference this Exhibit. All Services of the SAP Consultant(s) will be coordinated with the designated Ordering Activity representative. Ordering Activity is responsible for making the necessary internal arrangements for the carrying out of the Services on a non-interference basis.
2. Satisfaction with Performance. If at any time Ordering Activity or Contractor is dissatisfied with the material performance of an assigned Consultant or an Ordering Activity project team member, the dissatisfied party shall immediately report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change.
3. Reserved
4. Reserved.
5. Work Product. Unless otherwise agreed to in writing by the parties in a SOW, SAP shall have the right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the SAP Services and deliverables, whether or not developed for Ordering Activity.
6. Warranty. Contractor warrants that its Services shall be performed consistent with generally accepted industry standards. CONTRACTOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THIS SCHEDULE AND THE SERVICES PROVIDED HEREUNDER.
7. Reserved.
8. Reserved.
9. General Provisions.
 - 9.1 Contractor may subcontract all or part of the Services to be performed to a qualified third party.

SAP STANDARD SUPPORT SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP as further defined herein ("SAP Standard Support") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "Standard Support Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions

1.1 "Production System" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.2 “Service Session” shall mean a sequence of support activities and tasks carried out remotely to collect further information by interview or by analysis of a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.

2. Scope of SAP Standard Support

Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available, SAP Standard Support services. SAP Standard Support currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Standard Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP’s current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Standard Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to Standard Support Solutions. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provides remote access as specified in Section 3.2(iii). SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP can communicate if SAP assigns the problem message to an overseas SAP support center. If either or both of these conditions are not fulfilled, SAP may not be able to start message handling or to continue message handling until these conditions are fulfilled.
- Global 24x7 escalation procedures.

Remote Services

- SAP Standard Support currently includes a choice of one of the following remote services per live installation per calendar year:
 - One GoingLive Check e.g. in case the customer decides to implement new SAP Software and use it productively;
 - One GoingLive Upgrade Check for an upgrade to a higher release; or
 - One GoingLive OS/DB Migration Check. This OS/DB Migration Check assists the Licensee in preparing for a migration of an operating system or database. Migration is the responsibility of the Licensee.
- In case of vital alerts reported by SAP EarlyWatch® Alert, up to two (2) SAP EarlyWatch® Checks may be performed per calendar year for a Production System if required.
- A service can consist of one or more Service Sessions.
- In order to meet the requested delivery date for a remote service, the remote service has to be ordered at least two months in advance of the desired remote service delivery date. The right to remote services only exists for a specific installation and is not transferable to other installations.
- Further information and detail about individual remote services can be found in SAP Service Marketplace at <http://service.sap.com/standardsupport>.

SAP Solution Manager Enterprise Edition under Standard Support

- SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is for the following purposes only under SAP Standard Support: (i) delivery of SAP Standard Support, including delivery and installation, upgrade and maintenance of Standard Support Solutions and (ii) re-active support upon request from Licensee, including without limitation application of break fixes (e.g. patches, notes, etc.) and root cause analysis for Standard Support Solutions (iii) management of Standard Support Solutions using only those scenarios which are part of the functional baseline as defined on the SAP Service Marketplace <http://service.sap.com/solutionmanager>

- SAP – in its sole discretion – may update from time to time, on the SAP Service Marketplace under <http://service.sap.com/solutionmanager>, the use cases for SAP Solution Manager Enterprise Edition under SAP Standard Support.
- SAP Solution Manager Enterprise Edition shall only be used for SAP Standard Support during the term of this Schedule and by the Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Standard Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. SAP Solution Manager must explicitly not be used for 3rd party applications not licensed via SAP or any other components or IT assets operated in conjunction with SAP software.
- In the event Licensee terminates SAP Standard Support and receives SAP Enterprise Support in accordance with Section 6, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Enterprise Support Schedule.

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Standard Support Solutions (e.g., SAP EarlyWatch Alert).
- Administrative integration of distributed systems through SAP Solution Manager Enterprise Edition for the purposes of SAP EarlyWatch Alert
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks.
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

3. Licensee's Responsibilities

3.1 SAP Standard Support Program Management

In order to receive SAP Standard Support hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise ("Customer COE") (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements

Licensee must further satisfy the following requirements:

- (i) Continue to pay all Standard Support Fees in accordance with the Schedule contract and this Schedule.
- (ii) Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition Software system, with the latest patch levels for Basis and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (vii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Standard Support Solutions and Licensee's SAP Solution Manager Enterprise Edition installation.
- (viii) Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system at least for the Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (ix) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (x) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (xi) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xii) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Standard Support Solutions.

4. Customer Center of Expertise

4.1 Role of the Customer COE

The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE

The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be reviewed in the framework of the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the Standard Support Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Standard Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Standard Support Solutions and the Customer COE within Licensee's organization.
- Remote Service Planning: coordination of remote service delivery with SAP

4.3 Customer COE Certification

If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date, or (ii) within six (6) months after Licensee has started using at least one of the Standard Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels is available in SAP Service Marketplace at <http://service.sap.com/coe>.

5. Fees for SAP Standard Support

SAP Standard Support Fees shall be paid annually in advance and shall be specified in order documents to the Schedule contract. After the Initial Term (as defined in appendices or order documents to the Schedule contract), any limitations on increases to the SAP Standard Support Fees are subject to Licensee's compliance with the Customer COE requirements specified above.

6. Termination

6.1 Licensee may select SAP Enterprise Support with 3 months notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the beginning of any calendar month; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to any monthly anniversary of the renewal date of such order. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Standard Support effective with the commencement of SAP Enterprise Support. Any such selection shall apply to all Standard Support Solutions, and shall be on SAP's terms and conditions for SAP Enterprise Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

6.2 For the avoidance of any doubt, termination of SAP Standard Support or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Standard Support or partial selection of SAP Standard Support by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

7. Other Terms and Conditions

7.1 The scope of SAP Standard Support offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Standard Support Solutions.

7.3 In the event that Licensee is entitled to receive one or more remote services per calendar year, (i) Licensee shall not be entitled to receive such remote services in the first calendar year if the Effective Date of this Schedule is after September 30 and (ii) Licensee shall not be entitled to transfer a remote service to the next year if Licensee has not utilized such remote service.

7.4 FAILURE TO UTILIZE SAP STANDARD SUPPORT PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

7.5 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Standard Support on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may

be required to upgrade to more recent versions of its operating systems and databases to receive SAP Standard Support. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

7.6 SAP Standard Support is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.

SAP ENTERPRISE SUPPORT SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP, as further defined herein ("SAP Enterprise Support") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "Enterprise Support Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions:

1.1 "Go-Live" marks the point in time from when, after implementation of the Enterprise Support Solutions or an upgrade of the Enterprise Support Solutions, the Enterprise Support Solutions can be used by Licensee for processing real data in live operation mode and for running Licensee's internal business operations in accordance with the Schedule contract.

1.2 "Licensee Solution(s)" shall mean Enterprise Support Solutions and any other software licensed by Licensee from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.

1.3 "Production System" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.4 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be found on the SAP Service Marketplace (as specified in SAP Note 1324027 or any future SAP Note which replaces SAP Note 1324027).

1.5 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information by interview or by analysis of a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.

1.6 "Top-Issue" shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Production System.

1.7 "Local Office Time" shall mean regular working hours (8.00 a.m. to 6.00 p.m.) during regular working days, in accordance with the applicable public holidays observed by SAP's registered office. With regard to SAP Enterprise Support only, both parties can mutually agree upon a different registered office of one of SAP's affiliates to apply and serve as reference for the Local Office Time.

2. Scope of SAP Enterprise Support. Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Enterprise Support services. SAP Enterprise Support currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases. Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Enterprise Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Licensee with up to five days remote support services per calendar year from SAP solution architects
 - to assist Licensee in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Licensee's business process requirements.
 - to give Licensee guidance in form of knowledge transfer sessions, weighted one day, for defined SAP software/applications or Global Support Backbone components. Currently, content and session schedules are stated at <http://service.sap.com/enterprisesupport>. Scheduling, availability and delivery methodology is at SAP's discretion.
- SAP gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping the Licensee to optimize technical solution management of selected Enterprise Support Solutions.

- Configuration guidelines and content for Enterprise Support Solutions are usually shipped via SAP Solution Manager Enterprise Edition. Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as integral parts of Enterprise Support Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Enterprise Support Solutions and/or the applicable Documentation for the Enterprise Support Solutions.

Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Licensee custom code and enhancement packages and other Enterprise Support Solutions updates. Each check is conducted for one specific modification in one of Licensee's core business process steps. Licensee is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- **Modification Justification:** Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Enterprise Support Solutions which may fulfill the Licensee's requirements (for details see <http://service.sap.com/>).
- **Custom Code Maintainability:** Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to licensees and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- SAP Solution Manager Enterprise Edition – as described in Section 2.4

Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions, including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global 24x7 root cause analysis and escalation procedures in accordance with section 2.1 below.
- **Root Cause Analysis for Custom Code:** For Licensee custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3, applicable for priority "very high" and priority "high" messages. If the Licensee custom code is documented according to SAP's then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Licensee in issue resolution

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - Test administration for Enterprise Support Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - Quality Management for management of "Quality-Gates"
 - SAP-provided tools for automatic testing
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - **End-to-End Solution Operations:** Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - **Run SAP Methodology:** Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution. For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling and Service Level Agreement (SLA). When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. For further details on definition of message priorities see SAP Note 67739.

In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements (“SLA” or “SLAs”) shall apply to all Licensee support messages that SAP accepts as being Priority 1 or 2 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of this Schedule. As used herein, “Calendar Quarter” is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

2.1.1 SLA for Initial Response Times:

a. **Priority 1 Support Messages (“Very High”).** SAP shall respond to Priority 1 support messages within one (1) hour of SAP’s receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

b. **Priority 2 Support Messages (“High”).** SAP shall respond to Priority 2 support messages within four (4) hours of SAP’s receipt during SAP’s Local Office Time of such Priority 2 support messages. A message is assigned Priority 2 if normal business transactions in a Production System are seriously affected and necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the SAP system that are required to perform such transactions and/or tasks.

2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages: SAP shall provide a solution, work around or action plan for resolution (“Corrective Action”) of Licensee’s Priority 1 support message within four (4) hours of SAP’s receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message (“SLA for Corrective Action”). In the event an action plan is submitted to Licensee as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Licensee actions to support the resolution process; (iv) to the extent possible, planned dates for SAP’s actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP (“Processing Time”). Processing Time does not include the time when the message is on status “Customer Action” or “SAP Proposed Solution”, whereas (a) the status Customer Action means the support message was handed over to Licensee; and (b) the status SAP Proposed Solution means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Licensee agrees to reduce the priority level of the message.

2.1.3 Prerequisites and Exclusions.

2.1.3.1 Prerequisites. The SLAs shall only apply when the following prerequisites are met for support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of Enterprise Support Solutions which are classified by SAP with the shipment status “unrestricted shipment”; (ii) support messages are submitted by Licensee in English via the SAP Solution Manager Enterprise Edition in accordance with SAP’s then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance.

For Priority 1 support messages, the following additional prerequisites must be fulfilled by Licensee: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Licensee makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Licensee’s obligations hereunder; and (c) a Licensee contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

2.1.3.2 Exclusions. For SAP Enterprise Support in particular the following types of Priority 1 messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Licensee (including without limitation those developed by SAP Custom Development and/or by SAP subsidiaries) except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications is expressly excluded even if these country versions were created by SAP or an affiliate of SAP; (iii) the root cause behind the support message is not a malfunction, but a missing functionality (“development request”) or the support message is ascribed to a consulting request

2.1.4 Service Level Credit.

2.1.4.1 SAP shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Licensee submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any

Calendar Quarter during the Enterprise Support term, Licensee agrees that SAP shall be deemed to have met the its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

2.1.4.2. Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLA's are not met (each a "Failure"), the following rules and procedures shall apply: (i) Licensee shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Licensee's claim; (iii) Licensee shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP's ability to reach the SLAs; (iv) subject to this Section 2.1.4, if based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit ("SLC") to Licensee's next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Licensee's SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Licensee's SAP Enterprise Support Fee for such Calendar Quarter. Licensee bears the responsibility of notifying SAP of any SLCs within one month after the end of a Calendar Quarter in which a Failure occurs. No penalties will be paid unless notice of Licensee's well-founded claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Licensee's sole and exclusive remedy with respect to any alleged or actual Failure.

2.2 SAP Support Advisory Center. For Priority 1 and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP's support organization for mission critical support related requests (the "Support Advisory Center"). The Support Advisory Center will perform the following mission critical support tasks: (i) remote support for Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24x7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Licensee's IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Licensee; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.

As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Licensee's Contact Person and SAP shall jointly perform one mandatory setup service ("Initial Assessment") for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Licensee's Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for mission critical support related requests. The available local or global dial-in numbers are shown in SAP Note 560499.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

2.3 SAP Continuous Quality Check. In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the "Continuous Quality Check" or "CQC") per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Licensee and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Licensee, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Licensee with an action plan and/or written recommendations.

Licensee acknowledges that all or part of the CQC sessions may be delivered by SAP and/or a certified SAP partner acting as SAP's subcontractor and based on SAP's CQC standards and methodologies. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder.

Licensee acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Licensee fails to follow these guidelines, SAP is not obliged to deliver the yearly CQC to the Licensee.

2.4 SAP Solution Manager Enterprise Edition under SAP Enterprise Support.

2.4.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP Enterprise Support: (i) delivery of SAP Enterprise Support and support services for Licensee Solutions including delivery and installation of software and technology maintenance for Enterprise Support Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with Enterprise Support Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the Enterprise Support Solutions.

For application lifecycle management as outlined under section 2.4.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.4.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.4.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.4.3 SAP – in its sole discretion – may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.4.

2.4.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule and by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Enterprise Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.4.5 In the event Licensee terminates SAP Enterprise Support and receives SAP Standard Support in accordance with Section 6, Licensee's use of SAP Solution Manager Enterprise Edition under SAP Enterprise Support shall cease. Thereafter, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Standard Support Schedule.

2.4.7 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP Enterprise Support Program Management. In order to receive SAP Enterprise Support hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise for the Support Advisory Center (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP Enterprise Support hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all Enterprise Support Service Fees in accordance with the Schedule contract and this Schedule.
- (ii) Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issue as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition Software system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (vii) Perform the Initial Assessment as described in Section 2.2 and implement all the recommendations of SAP classified as mandatory.
- (viii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Enterprise Support Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (ix) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (x) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.
- (xi) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xii) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Enterprise Support Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise. In order to leverage the full potential value delivered as part of SAP Enterprise Support, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE. The Customer COE must fulfill the following basic functions:

- **Support Desk:** Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- **Contract administration:** Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- **Coordination of innovation requests:** Collection and coordination of development requests from the Licensee and/or any of its affiliates provided such affiliates are entitled to use the Enterprise Support Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Enterprise Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy.
- **Information management:** Distribution of information (e.g. internal demonstrations, information events and marketing) about Enterprise Support Solutions and the Customer COE within the Licensee's organization.
- **CQC and other remote services planning:** Licensee regularly engages in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the Enterprise Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. Enterprise Support Fees. SAP Enterprise Support Fees shall be paid annually in advance and shall be specified in appendices or order documents to the Schedule contract. After the Initial Term (as defined in the applicable appendices or order documents), any limitations on increases to the SAP Enterprise Support Fees are subject to Licensee's compliance with the Customer COE requirements specified above.

6. Termination

6.1 Licensee may select SAP Standard Support with 3 months written notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the start of the renewal period that follows the Initial Term that commenced as of Licensee's first order for SAP Enterprise Support; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to the start of the first renewal period in any calendar year that follows the Initial Term that commenced as of Licensee's first order for SAP Enterprise Support. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Enterprise Support effective with the commencement of SAP Standard Support. Any such selection shall apply to all Enterprise Support Solutions and shall be on SAP's terms and conditions for SAP Standard Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

6.3 For the avoidance of any doubt, termination of SAP Enterprise Support or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Enterprise Support or partial selection of SAP Enterprise Support by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

7. Other Terms and Conditions.

7.1 The scope of SAP Enterprise Support offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

7.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

7.3 In the event that Licensee is entitled to receive one or more services per calendar year, (i) Licensee shall not be entitled to receive such services in the first calendar year if the Effective Date of this Schedule is after September 30 and (ii) Licensee shall not be entitled to transfer a service to the next year if Licensee has not utilized such service.

7.4 FAILURE TO UTILIZE SAP ENTERPRISE SUPPORT PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

7.5 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Enterprise Support on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Enterprise Support. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

7.6 SAP Enterprise Support is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasesstrategy>.

SAP PRODUCT SUPPORT FOR LARGE ENTERPRISES SCHEDULE

This Schedule governs the provision of support services by Contractor, through SAP, for certain large enterprises as further defined herein ("SAP Product Support for Large Enterprises" or "SAP PSLE") for all software licensed by Ordering Activity (hereunder also referred to as "Licensee") under the Schedule contract (hereinafter collectively referred to as the "PSLE Solutions"), excluding software to which special support agreements apply exclusively.

1. Definitions:

1.1 "Go-Live" marks the point in time from when, after implementation of Licensee's PSLE Solutions or an upgrade of PSLE Solutions, can be used by Licensee for processing real data in live operation mode and for running Licensee's business in accordance with the Schedule contract.

1.2 "Net License Value" shall mean the undiscounted license fees for PSLE Solutions licensed by Licensee and Licensee Affiliates under the Schedule contract minus all discounts granted by SAP but before any migration credit is applied.

1.3 "Licensee Solution(s)" shall mean PSLE Solutions and any other software licensed by Licensee from third parties, provided such third party software is operated in conjunction with PSLE Solutions.

1.4 "Production System(s)" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business. Details and examples can be found on the SAP Service Marketplace (as specified in SAP Note 1324027 or any future SAP Note which replaces SAP Note 1324027).

1.6 "Top-Issues" shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with the SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Licensee's core Production System.

1.7 "SAP Support Services" shall mean SAP Product Support for Large Enterprises, SAP Enterprise Support or SAP Standard Support.

2. Scope of SAP Product Support for Large Enterprises. Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, SAP Product Support for Large Enterprises services. SAP Product Support for Large Enterprises currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed PSLE Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases.
- Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or PSLE Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping Licensee to optimize technical solution management of selected PSLE Solutions.
- Configuration guidelines and content for PSLE Solutions are usually shipped via SAP Solution Manager Enterprise Edition
- Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as part of PSLE Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the PSLE Solutions and/or the applicable documentation for the PSLE Solutions.

Message Handling

- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- Global message handling by SAP for problems related to PSLE Solutions (for more information refer to Section 2.1).
- Global 24x7 escalation procedures.

Access to Services Content

- SAP shall provide Licensee with access to SAP's remote services methodology. Licensee may use this content to perform proactive support services for the PSLE Solutions.

SAP Product Support for Large Enterprises Roadmap Planning

- Up to two times per calendar year, Licensee and SAP will perform a joint telephone conference to exchange information about Licensee's current or planned global projects to implement or upgrade PSLE Solutions, to review Top-Issues and risk mitigation plans and to discuss quality assurance topics with regard to end-to-end operations of and support for Licensee's SAP Software Solutions, and to generally align on collaboration between Licensee and SAP in the area of support activities and delivery of SAP Product Support for Large Enterprises services for Licensee's SAP Software Solutions.
- Licensee can contact the local support manager of SAP to request a scheduling of such telephone conference.
- If mutually agreed between Licensee and SAP, such planning can also take place in the course of an onsite meeting at a mutually agreed location.
- Licensee acknowledges that a successful planning requires the support of Licensee's Customer Center of Expertise.

SAP Solution Manager Enterprise Edition as described in Section 2.2

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems - to monitor available resources and collect system status information of the PSLE Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
 - Test administration for PSLE Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
 - Quality Management for management of "Quality-Gates"
 - SAP-provided tools for automatic testing
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
 - Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations
 - The road map of Run SAP to implement end-to-end solution operations
 - Tools, including the SAP Solution Manager Enterprise Edition application management solution.
- For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling. When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time.

In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provides remote access as specified in Section 3.2(iii).

SAP will commence message handling on errors of very high priority (for a definition of priorities, see SAP Note 67739) within 24 hours, 7 days a week provided that the following conditions are met: (i) The error must be reported in English and (ii) Licensee must have a suitably skilled English-speaking employee at hand so that Licensee and SAP can communicate if SAP assigns the problem message to an overseas SAP support center. Until these conditions are fulfilled, SAP may not be able to start message handling or to continue message handling.

2.2 SAP Solution Manager Enterprise Edition under SAP Product Support for Large Enterprises

2.2.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Schedule contract and is solely for the following purposes under SAP PSLE: (i) delivery of SAP PSLE and support services for Licensee Solutions including delivery and installation of software and technology

maintenance for PSLE Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with PSLE Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the PSLE Solutions.

For application lifecycle management as outlined under section 2.2.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.

2.2.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.2.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.2.3 SAP – in its sole discretion – may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.2.

2.2.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Schedule by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP PSLE other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self service in the SAP Solution Manager Enterprise Edition during the term of this Schedule for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.2.5 In the event Licensee terminates SAP PSLE and receives SAP Standard Support in accordance with Section 7, Licensee's use of SAP Solution Manager Enterprise Edition under SAP PSLE shall cease. Thereafter, Licensee's use of SAP Solution Manager Enterprise Edition shall be governed by the terms and conditions of the SAP Standard Support Schedule.

2.2.6 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Schedule contract may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Schedule.

3. Licensee's Responsibilities.

3.1 SAP Product Support for Large Enterprises Program Management. In order to receive SAP Product Support for Large Enterprises hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise (the "Contact Person") and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP Product Support for Large Enterprises hereunder, Licensee must further satisfy the following requirements:

- (i) Continue to pay all SAP Product Support for Large Enterprise Service Fees in accordance with the Schedule contract and this Schedule.
- (ii) Otherwise fulfill its obligations under the Schedule contract and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for remote analysis of issues as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (vii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the PSLE Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall

maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.

(viii) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.

(ix) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP. (x) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.

(xi) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the PSLE Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise In order to leverage the full potential value delivered as part of SAP Product Support for Large Enterprises, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE: The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from Licensee and/or affiliates provided such affiliates are entitled to use the PSLE Solutions under the Schedule contract. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of PSLE Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy. The Customer COE shall also coordinate Licensee's modification notification and disclosure requirements.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about PSLE Solutions and the Customer COE within Licensee's organization.
- Service Planning: Licensee regularly engages in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. If Licensee does not already have a certified Customer COE upon the Effective Date, Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the PSLE Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure that covers the basic functions (primary certification). Licensee has the option to pursue advanced certification of their Customer COE. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

5. Revenue Thresholds.

5.1 Licensee shall be eligible to receive SAP Product Support for Large Enterprises from the date at which Licensee informs SAP in writing about the meeting of both of the following criteria: (i) the aggregate of the overall yearly expenditure of Licensee and all Licensee Affiliates under the Schedule contract on the following exceeds or is equal to USD 7,000,000. (seven million dollars) (the "Maintenance Threshold"): (a) SAP Enterprise Support, whereas, for purposes of this paragraph, yearly expenditures shall be deemed to be the product of seventeen percent (17%) times the applicable Net License Value, irrespective of the then current SAP Enterprise Support Factor in effect, (b) SAP Product Support for Large Enterprises (currently 17%) times the applicable Net License Value, (c) SAP Standard Support, whereas, for purposes of this paragraph, yearly expenditures shall be deemed to be the product of seventeen percent (17%) times the applicable Net License Value, irrespective of the then current SAP Standard Support Factor in effect, (d) Maintenance for software licensed from Business Objects; and (e) MaxAttention; and (ii) the Net License Value exceeds or is equal to USD 40,000,000 (forty million dollars) (the "License Threshold").

5.2 During the term of this Schedule, Licensee shall be responsible for advising SAP if Licensee falls below the Maintenance Threshold and/or the License Threshold. Upon Licensee's request, SAP will assist Licensee in this determination. If Licensee falls below either or both of these thresholds Licensee shall inform SAP thereof immediately and from the date Licensee falls below the Maintenance Threshold and/or the Licensee Threshold the following shall apply: (a) the SAP Product Support for Large Enterprises Factor for Licensee's and Licensee's Affiliates PSLE Solutions under Appendices to the Schedule contract is replaced by an SAP Product Support for Large Enterprises Factor of 21.42% in 2011; 22% in 2012 through 2016 and thereafter the then current SAP Enterprise Support Factor according to SAP's then current price list ; (b) the scope of SAP's support shall

remain as defined in Section 2 above; (c) the SAP Product Support for Large Enterprises Factor for any additional purchases of software licenses subsequent to falling below the Maintenance Threshold and/or the License Threshold will be 22% through 2016; and thereafter the then current SAP Enterprise Support Factor according to SAP's then current price list; SAP will offer to Licensee the option to select SAP Enterprise Support or SAP Standard Support in accordance with its then current terms. If Licensee selects SAP Enterprise Support, the following shall apply: The SAP Enterprise Support Factor shall be 18.9% in 2011, 19.5% in 2012, 20.1% in 2013, 20.8% in 2014, 21.4% in 2015, 22% in 2016, and the SAP Enterprise Support Factor for additional purchases of software licenses subsequent to switching to SAP Enterprise Support will be 22% through 2016. Thereafter the then-current SAP Enterprise Support Factor according to SAP's then current price list. If Licensee selects SAP Standard Support, such services shall be provided in accordance with SAP's terms and conditions including without limitation GSA pricing. In either case, SAP and Licensee shall execute an amendment to the Schedule contract memorializing Licensee's selection and SAP's the maintenance terms and conditions.

In addition, in the event Licensee notifies SAP on the day of, or prior to its falling below the Maintenance and/or License Threshold, that Licensee is switching to SAP Enterprise Support or SAP Standard Support, then Licensee shall be permitted to stay on SAP Product Support for Large Enterprises at a Factor of 17% for the period until the switch to SAP Enterprise Support or SAP Standard Support is contractually executed, for a maximum a period of 90 days, after which time the Factors set forth in 5.2 (a) shall apply. **5.3** Licensee is not eligible for SAP Product Support for Large Enterprises: (i) during the period between meeting the criteria under 5.1 and the date at which SAP receives written notice from Licensee that Licensee meets these criteria; and (ii) during the period between the date at which Licensee falls below the criteria under 5.1 and the date at which Licensee informs SAP accordingly, if the date of Licensee's notification to SAP is after the date at which Licensee fell below the criteria under 5.1.

5.4 Licensee shall not receive any refund, including, but not limited to, previously paid maintenance fees, e.g. fees paid for SAP Enterprise Support.

- 6. Fees for SAP Product Support for Large Enterprises.** SAP Product Support for Large Enterprises Fees shall be paid annually in advance and shall be specified in Appendices to the Schedule contract. After the Initial Term (as defined in the applicable appendices, software agreements or order documents), the SAP Product Support for Large Enterprises Fees and any limitations on increases are subject to Licensee's compliance with the Customer COE requirements specified above.

7. Termination

7.1 Licensee may select either SAP Enterprise Support or SAP Standard Support in accordance with the following provisions. **7.1.1** SAP Enterprise Support. Licensee may select SAP Enterprise Support with three (3) months' written notice to SAP either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the beginning of any calendar month; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to any monthly anniversary of the renewal date of such order. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Product Support for Large Enterprise effective with the commencement of SAP Enterprise Support. Any such selection shall apply to all PSLE Solutions, and shall be on SAP's terms and conditions for SAP Enterprise Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

7.1.2 SAP Standard Support. Licensee may select SAP Standard Support with three (3) months' written notice either (i) with respect to all orders for support that are solely on a calendar year renewal basis, prior to the start of the renewal period that follows the Initial Term that commenced as of Licensee's first order for SAP Product Support for Large Enterprises; or (ii) with respect to all orders for support that are not solely on a calendar year renewal basis, prior to the start of the first renewal period in any calendar year that follows the Initial Term that commenced as of Licensee's first order for SAP PSLE. Such selection shall be stated by Licensee in the notice letter, and shall terminate SAP Product Support for Large Enterprises effective with the commencement of SAP Standard Support. Any such selection shall apply to all PSLE Solutions and shall be on SAP's terms and conditions for SAP Standard Support, including without limitation GSA pricing. SAP and Licensee shall execute an amendment or other document to the Schedule contract memorializing Licensee's selection and SAP's maintenance terms and conditions.

7.2 For the avoidance of doubt, termination of SAP Product Support for Large Enterprises or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Schedule contract shall strictly apply to all licenses under the Schedule contract, its appendices, schedules, addenda and order documents and any partial termination of SAP Product Support for Large Enterprise or partial selection of any one type of SAP Support Services by Licensee shall not be permitted in respect of any part of the Schedule contract, its appendices, schedules, addenda, order documents or this Schedule.

8. Other Terms and Conditions.

8.1 The scope of SAP Product Support for Large Enterprises offered by SAP may be changed annually by SAP at any time upon three months prior written notice.

8.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

8.3 FAILURE TO UTILIZE SAP PRODUCT SUPPORT FOR LARGE ENTERPRISES PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

8.4 In the event SAP licenses third party software to Licensee under the Schedule contract, SAP shall provide SAP Product Support for Large Enterprises on such third party software to the degree the applicable third party makes such support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Product Support for Large Enterprises. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

8.5 SAP PSLE is provided according to the current maintenance phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.

Siemens Industry, Inc.
1911 Harrison Street
Hollywood, FL 33020

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

1. **Scope.** This Rider and the attached **Siemens Industry, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - 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**

SIEMENS INDUSTRY, INC.

SIEMENS INDUSTRY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Buyer's Requirements. Timely performance by Contractor through Siemens is contingent upon Ordering Activity's supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.

2. Limited Warranty. (a.) Limited Product Warranty Statements. For each Product purchased from Contractor or an authorized reseller, Contractor makes the following limited warranties: (i) the Product is free from defects in material and workmanship, (ii) the Product materially conforms to Siemens' specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, Siemens has title to the Product free and clear of liens and encumbrances (collectively, the "Limited Warranties"). Warranties with respect to software which may be furnished by Contractor as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by Contractor. If software is furnished by Contractor, then the attached Software License/Warranty Addendum shall apply.

(b.) Conditions to the Limited Warranties. The Limited Warranties are conditioned on (i) Ordering Activity storing, installing, operating and maintaining the Product in accordance with Siemens' instructions, (ii) no repairs, modifications or alterations being made to the Product other than by Contractor through Siemens or its authorized representatives, (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Ordering Activity discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Ordering Activity providing prompt written notice of any warranty claims within the warranty period described below, (vi) at Contractor's discretion, Ordering Activity either removing and shipping the Product or non-conforming part thereof to Contractor through Siemens, at Ordering Activity's expense, or Ordering Activity granting Contractor through Siemens access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Ordering Activity not being in default of any payment obligation to Contractor under these terms.

(c.) Exclusions from Limited Warranty Coverage. The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Siemens or not bearing its nameplate. To the extent permitted, Contractor hereby assigns any warranties made to Siemens for such non-Siemens equipment. Contractor shall have no liability to Ordering Activity under any legal theory for such non-Siemens equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Ordering Activity "as is" with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses and light bulbs and lamps.

(d.) Limited Warranty Period. Ordering Activity shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide Contractor with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Ordering Activity, unless Ordering Activity has previously provided Contractor with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to Siemens' choice of repair or replacement of the Product, or non-conforming parts thereof, or refund of all or part of the purchase price. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by Siemens, (i) Contractor shall be responsible for any labor required to gain access to the Product so that Siemens can assess the available remedies and (ii) Contractor shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of Siemens.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product. THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

3. Patent and Copyright Infringement. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding to the extent permitted by 28 U.S.C. 516. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be

responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes noninfringing.

Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

Sourcefire, Inc.
9770 Patuxent Woods Drive
Columbia, MD 21046

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

1. **Scope.** This Rider and the attached **Sourcefire, 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**

SOURCEFIRE, INC.

SOURCEFIRE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS

The following capitalized terms shall have the following meanings in this Attachment A:

- 1.1. "Appliance" means any Sourcefire-branded network security appliance made available to You, consisting of Hardware and pre-installed Sourcefire Software and/or other Licensed Materials.
- 1.2. "Documentation" means written information contained in user manuals and technical specifications pertaining to the use of the Sourcefire Products and made available by Sourcefire with the Sourcefire Products in any manner (including on CD-ROM, or on-line), including any pertinent Updates.
- 1.3. "Hardware" means the hardware components of any Appliance on which Sourcefire Software is installed and runs.
- 1.4. "Laws" means, collectively, all international and national laws, treaties, statutes, ordinances, regulations and other types of government authority (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity).
- 1.5. "Licensed Materials" means any Sourcefire Software, Documentation and URL Data licensed by Sourcefire to You hereunder.
- 1.6. "Party" or "Parties" means, individually each party hereto, and collectively all the parties to this Attachment A.
- 1.7. "Products" means the Sourcefire Products and/or the Third Party Products.
- 1.8. "Reseller" means an authorized reseller or distributor of Sourcefire.
- 1.9 "Sourcefire Products" means the Appliance(s) and/or Licensed Materials.
- 1.10. "Sourcefire Software" means the machine-readable computer software programs licensed by Sourcefire to You hereunder, including any pertinent Updates.
- 1.11. "Third Party Products" means any products or other materials made available to You for use with Sourcefire Products and which are not Sourcefire Products.
- 1.12. "Updates" means with respect to Licensed Materials any Sourcefire-approved periodic patches, bug-fixes, work-arounds, error corrections, enhancements, rules updates, vulnerability database updates, security enhancement updates and additions and other modifications thereto, or revised versions thereof, which may be made available from time to.
- 1.13. "URL Data" means that URL data made available to You by Sourcefire for use with the Sourcefire Products. Unless otherwise defined herein, the capitalized terms used in this EULA shall be defined in the context in which they are used.
- 1.14 "End User," "You" or "Your" means the Ordering Activity which is defined as 1) any entity authorized to use GSA sources of supply and services as set forth in GSA Directive ADM 4800.2F or such later issued version, and 2) any entity acting on behalf of an Ordering Activity pursuant to a properly issued letter of authorization under Information for Ordering Activities applicable to All Special Item Numbers.

2. LICENSE GRANT

Subject to the terms and conditions of this Attachment A, Contractor grants to You a limited, non-exclusive and non-transferable license to download, install and use for Your internal operations and internal security purposes the Licensed Materials for which You have paid the required license fees to Contractor or a Reseller, as applicable. Such Licensed Materials may be delivered to You pre-installed on an Appliance, on a recorded or fixed media, or may be made available to You via download from a website designated by Sourcefire. In order to use the Products, You may be required to input a registration number, product authorization key or otherwise register Your Products online at Sourcefire's designated website to obtain the necessary license key or license file. You shall own the Appliance that You purchase and the magnetic or other physical media upon which the Licensed Materials are originally or subsequently recorded or fixed, but Sourcefire and Sourcefire's licensors, as applicable, retain all title, copyright and

other intellectual proprietary rights in, and ownership of, the Licensed Materials regardless of the media upon which the original or any copy may be recorded or fixed. You may make one (1) copy of the Licensed Materials solely for internal backup purposes. Contractor and its licensors expressly reserve any rights in Licensed Materials not granted herein.

3. SCOPE OF USE

If You purchased an Appliance, You may only use the Licensed Materials on the Appliance for which the Licensed Materials are provided and registered for use. Additionally, You may not deploy or use any Licensed Materials in a manner that exceeds the permitted number of connections to the applicable Appliance(s) associated with the license fees paid or payable by You. If Sourcefire Software is made available to You for use without an Appliance, Your use of such Sourcefire Software may not exceed the applicable use restrictions, number of licenses purchased and other limitations associated with the license fees paid or payable by You for such use. If You purchase a license to use the Licensed Materials on a subscription or term basis, You may not deploy or use such Licensed Materials in a manner that exceeds the permitted number of users, term of license, monitored hosts or other subscription or term limitations associated with the applicable license fees paid or payable by You.

4. LICENSE RESTRICTIONS

You agree not to directly or indirectly: (i) sell, lease, rent, distribute, sublicense or transfer any of the Licensed Materials; (ii) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to determine the source code of any of the Licensed Materials, except to the limited extent permitted by law; (iii) modify, make error corrections to or create derivative works based on the Licensed Materials; (iv) use any Licensed Materials for the benefit of any third parties (e.g., in an ASP, SaaS, outsourcing or service bureau relationship) or in any way other than in its intended manner, except as otherwise permitted by Contractor; (v) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the Hardware or within the Licensed Materials; or (vi) disable or circumvent any access control or related security measure, process or procedure established with respect to the Appliance or any Licensed Materials or any other part thereof. You may use the Sourcefire Products to conduct internal performance and benchmark testing, the results of which only You may publish or publicly disseminate, provided that (a) Contractor through Sourcefire has reviewed and approved the methodology, assumptions and parameters of Your testing, (b) You publish a full description of the test environment and methods, assumptions and parameters used in the testing, and (c) You do not publish false, deceptive or misleading statements relating to the test or Sourcefire Products. Please contact a Sourcefire technical support representative regarding approved testing methodology, assumptions and parameters.

As part of your use of the Sourcefire Products, You may be granted access to URL Data and/or a hosted database or related service (the "Service"). You acknowledge and agree that in addition to all other terms and conditions set forth in this Attachment A, You will not with respect to the URL Data or Service directly or indirectly: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the URL Data or Service; (ii) modify or make derivative works based upon the URL Data or the Service; (iii) create Internet "links" to the URL Data or Service or "mirror" the URL Data or Service on any other server or wireless or Internet-based device; or (iv) utilize the URL Data or Service in order to: (a) build a competitive product or service; (b) build a product using similar ideas, features, functions or graphics; (c) copy any ideas, features, functions or graphics; or (d) aggregate subscriptions to the URL Data or Service, either by sublicensing or by rebranding of the URL Data or Products.

5. INTELLECTUAL PROPERTY; TITLE

This Attachment A does not transfer to You any title or any ownership right or interest in any Licensed Materials or in any other intellectual property rights of Sourcefire or Sourcefire's licensors. You acknowledge that the Appliance(s) and the Licensed Materials contain, embody and are based upon patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned by Sourcefire and its licensors. If You purchased an Appliance, title and risk of loss to each Appliance transfers to You when the Appliance is delivered to Sourcefire's designated carrier for shipment. In all instances, Licensed Materials are licensed to You pursuant to this Attachment A and not sold to You.

6. TECHNICAL SUPPORT

You may obtain technical support for Sourcefire Products by separately enrolling in Contractor through Sourcefire's customer support plan (the "Support Plan") by paying Contractor the customer support GSA fee. All Updates received by You pursuant to the Support Plan shall be governed by, and licensed to You under, this Attachment A.

7. INSTALLATION

You represent, warrant and covenant that You are solely responsible for the proper installation, configuration and management of the Appliance on which the Licensed Materials will be installed, as well as the installation of any separately provided Licensed Materials. You further understand and hereby acknowledge that the failure to properly configure and manage an Appliance, and the failure to properly install any separately provided Licensed Materials, may adversely affect the performance of the Appliance and the Licensed Materials. You represent, warrant and covenant that You will adhere strictly to the recommended minimum requirements specified in the Documentation. Contractor shall have no obligation under this Attachment A to the extent an Appliance or any separately provided Licensed Materials fails to substantially perform the functions described in the Documentation, in whole or in part, because (i) You fail to meet specified minimum requirements; (ii) Your separate hardware fails to perform properly; (iii) You mis-configured an Appliance; or (iv) the Licensed Materials had been improperly installed.

8. WARRANTY AND DISCLAIMER

Contractor warrants that, for a period of ninety (90) days from the date of initial shipment of the Appliance or, in the case of Sourcefire Software separately provided to You, the date the Sourcefire Software is made available to You for download or delivered on a fixed media (as the case may be, the "Software Warranty Period"), the unmodified Sourcefire Software will, under normal use, substantially perform the functions described in its Documentation. Contractor also warrants that for a period of one (1) year from the date of initial shipment of a new Appliance (the "Hardware Warranty Period") that the unmodified Hardware comprising such Appliance will, under normal use, be free of substantial defects in materials and workmanship. Neither of the aforementioned warranties apply if the Sourcefire Software or Appliance (i) has been altered, except by Contractor or its authorized representative,

(ii) has not been installed, operated, repaired or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident by You, or (iv) is licensed for beta, evaluation, testing or demonstration purposes.

EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 8, THE SOURCEFIRE PRODUCTS (INCLUDING, ANY EVALUATION AND BETA PRODUCTS), AND ANY OTHER DOCUMENTATION, MATERIALS AND/OR DATA 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.

THE SOURCEFIRE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. SOURCEFIRE PRODUCTS ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT 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 APPLIANCE, THE LICENSED MATERIALS OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS ATTACHMENT A WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT CONTRACTOR'S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR YOUR BENEFIT ONLY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ATTACHMENT A, ANY THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.

Contractor's obligation and liability, and Your remedy under the warranties set forth in Section 8 shall be for Contractor to use commercially reasonable efforts to remedy the problem, or to replace the defective Hardware and/or the Sourcefire Software, if Contractor is notified in writing of all warranty problems during the applicable warranty period.

9. U.S. GOVERNMENT END USERS

The Licensed Materials, information and data provided under this Attachment A are prepared entirely at private expense and are "Commercial Items" as that term is defined in 48 C.F.R. 2.101. If you are an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then your use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.71023, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, this commercial product and data are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other users pursuant to the Sourcefire's standard end user license agreement. In case of conflict between any of the FAR and DFARS provisions listed herein and this Attachment A, the construction that provides greater limitations on the U.S. Government's rights shall control. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that this commercial product and data are a trade secret and proprietary commercial products and not subject to disclosure.

EXHIBIT A - SUPPORT PLAN TERMS

A. Support Services Terms. Contractor through Sourcefire will provide Support Services to End User for Covered Products provided that End User has paid the applicable Support Fees to Contractor. The Support Services will be provided in accordance with the following:

1. Technical Assistance. Contractor through Sourcefire will provide End User with technical assistance regarding use of the Covered Products by telephone and on-line during the hours that are applicable to the Support Plan Level purchased by End User. Access to Support Services by telephone and on-line is limited to End User's designated support contacts. End User should refer to the Support Guidelines attached hereto as Exhibit B for Sourcefire contact information.

2. New Releases and Updates. Contractor through Sourcefire will make available to End User all Major Releases, Minor Releases and Updates to the Current Version of the Software that Sourcefire generally releases or generally makes available at no additional cost to Sourcefire's other customers subscribing to the same Support Plan Level. To the extent a Major Release, Minor Release or Update includes substantially new functionality; Sourcefire reserves the right to treat such new functionality as a new Software product.

3. Repair and Replacement of Hardware. If End User has purchased a Covered Product that includes Hardware, Contractor through Sourcefire will, at its option, either repair or replace any defective Hardware. Hardware units or parts used for replacement will either be new or refurbished so that End User gets a "like-for-like" exchange. All Hardware units and parts removed from a Covered Product for replacement will, upon removal and return, be the property of Sourcefire; the replacement Hardware units and parts will, upon delivery, be the property of End User. End User will promptly return all units and parts to be replaced to Sourcefire in accordance with the Support Guidelines and Sourcefire's instructions.

4. Error Reporting. End User may submit to Contractor through Sourcefire support requests identifying potential errors in a Covered Product. Requests should be in writing and directed to Sourcefire through the customer support page of the Sourcefire support website, currently located at <https://support.sourcefire.com>, and should provide Sourcefire with sufficient information to reproduce the error. Sourcefire retains the right to determine the final disposition of all such requests, and will inform End User of the disposition of each request.

5. Error Corrections. Contractor through Sourcefire will use commercially reasonable efforts to correct any reproducible and material error in a Covered Product with a level of effort reasonably commensurate with the severity of the error. Corrections will be made in accordance with the time schedule set forth in the Support Guidelines. Sourcefire will not be responsible for correcting errors not attributable to Sourcefire or that do not relate to Covered Products. Sourcefire may provide error corrections in the form of an Update and may publish "known issue" information with each Update to the extent necessary.

6. End User Responsibility. As a condition to Sourcefire's provision of the Support Services, End User will do the following: (a) implement in a reasonably timely manner all Updates provided by Contractor through Sourcefire; (b) supply Sourcefire with access to and use of information and personnel reasonably determined to be necessary by Sourcefire to render the Support Services; (c) perform any tests or procedures reasonably recommended by Sourcefire for the purpose of identifying and/or resolving any problems; and (d) if Hardware was purchased, maintain the Hardware in good working order in accordance with the manufacturers' specifications, and in compliance with the minimum system requirements set forth in the Covered Product documentation, to ensure that any problems reported to Sourcefire are not due to user error or End User's improper maintenance. End User's delay or failure to satisfy the foregoing will, for the duration of the delay or failure, relieve Sourcefire of its obligations under this Attachment A to provide the Support Services.

7. Consistent Product Coverage. For each deployment of Covered Products, Contractor through Sourcefire requires that End User purchase the same Support Plan Level for all Covered Products comprising such deployment.

8. Term. Contractor through Sourcefire will provide the Support Services during the Initial Term and any Renewal Term provided that End User has paid all applicable Support Fees.

9. Limitations. Contractor through Sourcefire will provide the Support Services only for the Current Version and the Prior Version. Sourcefire has no obligation to provide Support Services for a Legacy Version. Sourcefire will not provide Support Services for Covered Products that have been modified by End User, a third party on behalf of End User or otherwise modified and not approved by Sourcefire in writing. Sourcefire does not provide Support Services to address problems resulting from: (a) use of a Covered Product in a manner not described in the user documentation or otherwise not in the ordinary course; (b) the use of third party software, firmware or data, or from the use of hardware, software or firmware not meeting Sourcefire's minimum recommended configuration; or (c) use of a Covered Product other than in the recommended operating environment. Support Services do not include the costs of developing or otherwise providing End User with additional features, functionality or customizations to the Covered Products, which additional services may be purchased separately from Sourcefire. For products that (a) have reached their end-of-life (EOL) or end-of-support (EOS) date, or (b) provide additional functionality based on a specific Hardware platform configuration, End User is responsible for acquiring, at its own cost, any updated and additional Hardware, firmware and software necessary to implement or use an Update.

10. End of Life Policy. Support Services provided by Contractor through Sourcefire may be limited, and the security effectiveness of Sourcefire products may be diminished, due to Hardware and/or Software products impacted by an EOL announcement and/or End User not migrating to the latest version of the Sourcefire products. For Hardware products, a replacement unit will not be provided for the return of a unit that has passed its EOL date. Consult the Product Life Cycle section of the Sourcefire website, currently located at www.sourcefire.com/customer-support, for more information regarding EOL and EOS announcements.

11. Support Guidelines. The Support Services provided to End User will be provided in accordance with the Support Guidelines attached hereto as Exhibit B which are incorporated herein by reference, and will vary based on the Support Plan Level purchased.

12. End User Suggestions. Any suggested changes, clarifications, additions, modifications or improvements to a Covered Product that End User provides to Contractor through Sourcefire (collectively, "Improvements") will constitute an assignment to Sourcefire (without charge) of all right, title and interest in such Improvements. Sourcefire has the right, but not the obligation, to incorporate Improvements into Covered Products as it deems necessary in its sole discretion. Sourcefire will be the exclusive owner of the Improvements, including all intellectual property rights related thereto.

B. Definitions: For purposes of this Attachment A, the following terms will have the following meanings:

"*Authorized Reseller*" means any reseller, distributor or other entity authorized by Contractor to directly or indirectly resell Sourcefire products and support to End User on behalf of Contractor.

"*Covered Products*" means those Sourcefire products specified in an Order that will include Hardware and/or Software for which End User has paid the applicable Support Fee(s) to receive Support Services.

"*Current Version*" means the most recent Major Release of a Software product.

"*Hardware*" means the Sourcefire-branded appliance on which Software is installed and is designed to operate.

"*Initial Term*" means the initial period of time starting on the date of shipment for the applicable Covered Product during which Sourcefire will provide Support Services to End User. The Initial Term will be one (1) year, unless otherwise agreed to by Sourcefire.

"*Legacy Version*" means any Major Release older than the Prior Version.

"*Major Release*" means a version of Software in which there is a change in the number immediately preceding or immediately following the first decimal point in the Software version number (e.g. v4.9 to v5.0 or v5.0 to v5.1).

“*Minor Release*” means a version of Software in which there is a change in any number following the second decimal point in the Software version number (e.g. v4.10 to v4.10.1 or v4.10.1.1 to v4.10.1.2).

“*Order*” means one of the following documents: (i) an invoice from Contractor or from an Authorized Reseller to End User, (ii) an executed sales quotation between End User and Contractor, or (iii) a purchase order from End User to Contractor or from an Authorized Reseller to Contractor on End User’s behalf.

“*Prior Version*” means the next most recent Major Release of a given Software product preceding the Current Version.

“*Renewal Term*” means any term beyond the Initial Term during which Sourcefire will provide Support Services to End User.

“*Software*” means the software application component(s) of the Covered Product(s) that are combined for use with the Hardware and/or that may be licensed separately for use without Hardware. Updates are considered Software under this Agreement. All Software is subject to the end user license agreement between Sourcefire and End User.

“*Support Fee*” means the GSA price for the applicable Covered Product at the Support Plan Level purchased for the Initial Term and/or the Renewal Term, as applicable. The Support Fee may be (i) a separate charge in addition to the purchase price for the Covered Product, or (ii) included in the price of a license subscription for software-only products, as applicable.

“*Support Guidelines*” means the guidelines and processes that govern Support Services, a current copy of which is attached hereto as Exhibit B.

“*Support Plan Level*” means that level of Support Services for the applicable Covered Product purchased by End User as set forth in an Order. A description of the different levels of Support Services are found on the Sourcefire website, currently at <http://www.sourcefire.com/customer-support>.

“*Update*” means any update to the Software including but not limited to, patches, bug-fixes, work-arounds, error corrections, enhancements, rules updates, vulnerability database updates and security enhancement updates.

EXHIBIT B - SUPPORT GUIDELINES

A. Communications/Contact Information

The following communication methods are available to obtain assistance from Contractor through Sourcefire for a Support Services request.

- Telephone Support: +1 (410) 423-1901; 1-800-917-4134
- Customer Portal: <https://support.sourcefire.com>
- Email: support@sourcefire.com
- See <https://support.sourcefire.com/contact> for additional access numbers

B. Response Times

Normal Business Hours for Support Services are 11:00 PM Sunday through 12:00AM Saturday (U.S. Eastern Time).

Telephone Response:

- During Normal Business Hours telephone calls are taken in the order that they are received.
- Outside of Normal Business Hours calls are handled by on-call support engineers.
- Sourcefire typically responds to all calls within one (1) hour of receipt.

Email/Web Response:

- Sourcefire typically responds to all inquiries submitted during Normal Business Hours via email or via the Customer Portal within two (2) hours.
- Inquiries submitted outside of Normal Business Hours via email or via the Customer Portal will typically be answered within two (2) hours of the start of the next business day.

It is strongly recommended that End User contact Sourcefire Customer Support via telephone for all severe product issues arising outside of Normal Business Hours.

C. Support Requests

End User will be required to provide all of the following information when contacting Sourcefire with a technical issue:

- Name
- Covered Product serial number, license key or other identification number, as applicable
- Detailed request or problem description
- The priority and/or urgency of request
- Whether any recent changes have been made to the Covered Products or End User’s network
- List of changes that were applied to the configuration of the Covered Product prior to the problem’s first occurrence
- Any relevant environmental and architectural information
- Packet capture (if applicable)
- Troubleshoot script output

D. Technical Issue Resolution

Support requests begin with Sourcefire's Tier I Support Team. A Technical Support Engineer ("TSE") will provide End User with a case number and will manage the reported technical issue to its final resolution. The TSE will attempt to resolve the issue as quickly as possible and will engage additional resources at Sourcefire as needed including members of Tier II Support and/or Product Development in accordance with the escalation process outlined below. If the technical issue is determined to be defective Hardware, Sourcefire will, subject to any applicable EOL announcements then in effect, ship an advance replacement unit and/or parts, as applicable, within one (1) business day via priority overnight shipping. The time to delivery of the advance replacement unit and parts will vary depending on the destination and local customs clearance requirements. Advance replacement units will be shipped with the Current Version of software unless otherwise requested.

E. Severity Definitions

Contractor through Sourcefire classifies reported issues in accordance with the following:

Severe:

- The Covered Product is down or not functioning; or
- Network traffic has been disrupted as a result of the use of the Covered Product; or
- There are no workarounds to restore Covered Product functionality.

Moderate:

- Network or Covered Product is operating at a reduced capacity; or
- Significant product functionality is not working according to Covered Product definitions; or
- Significant business objectives for the use of the Covered Product cannot be met.

Minor:

- Minor product functionality is not working according to Covered Product definitions; or
- Minor business objectives for the use of Covered Product cannot be met.

F. Escalation Process

The escalation process is managed by the TSE with assistance from the End User. The escalation process moves from the TSE through the Support Management and Product Development groups as appropriate. The TSE will manage the resolution of the reported issue, which includes acting as the primary contact for communication between the various Sourcefire groups and the End User throughout the escalation process. The following estimated response timelines define the normal guidelines for escalation beyond Tier I Support Team. The timeframes are based on the severity level of the reported issue and may be reduced as appropriate as determined by Sourcefire.

Severity Level	Escalation to Tier II Support	Escalation to Product Development
Severe	Within 24 hours of initial request	Within 24 hours of escalation to Tier II
Moderate	Within 3 business days of initial request	Within 3 business days of escalation to Tier II
Minor	Within 5 business days of initial request	Within 5 business days of escalation to Tier II

If an acceptable workaround can be applied to the issue, then the Severity Level may be downgraded to the next lower level. For example, if an acceptable workaround exists for a Moderate issue, then the Severity Level for such issue will be downgraded to Minor.

If reasonable progress has not been made, the technical issue will be escalated to Sourcefire's Support Management and/or Product Development groups, as appropriate. Escalation of an issue thru the Support Management group will be initiated whenever the resolution is not meeting the End User's expectations or whenever a technical issue has not been resolved within the escalation time frames above. Since each technical issue is unique, there may be some variation in the resolution time.

Escalation can be initiated from two sources: (1) TSEs are tasked with the responsibility of escalating based on their judgment of both the business impact and the technical issue, and (2) End User is encouraged to seek escalation when an issue is not being resolved in accordance with the level of Support Services that End User has purchased. End User can escalate through the TSE, Support Management or its designated Account Representative.

Stonesoft
Italahdenkatu 22 A
FI-02100 Helsinki, Finland

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

1. **Scope.** This Rider and the attached **Stonesoft** (“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**

STONESOFT

STONESOFT CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

DEFINITIONS

“Error” means any failure of the licensed Software to conform in any material respects to its written specifications.

“Hardware” means the Stonesoft hardware on which the Software operates.

“License File” means the file, which enables the Product to operate. This file is generated by Ordering Activity from Stonesoft’s Website at www.stonesoft.com, by using the Proof of License, which is provided to Ordering Activity along with the Product.

“Order Confirmation” means the order confirmation sent to the Ordering Activity confirming the terms and conditions of the delivery of Stonesoft Products and specifies the Product specific limitations.

“Product” means all Stonesoft product(s), consisting of Software, any tools, documentation, Data or associated materials that may accompany such delivery and, if applicable, Hardware. The right to use Products may be limited

“Proof of License” means the code provided by Stonesoft to Ordering Activity for the License File creation.

“Software” means the object code copy of the Stonesoft software solutions and all third party software that Stonesoft may license from third parties and license to the Ordering Activity as part of the Software, as well as all related manuals and other documentation and any future upgrades provided by Stonesoft under this Attachment A. Specifically excluded from this definition, are all software components licensed under the terms of the GNU General Public License or the GNU Lesser General Public License, as published by the Free Software Foundation (for example, software components relating to the Linux operating system kernel).

1. GRANT OF LICENSE

1.1 Ordering Activity is granted either

Subject to the payment of the purchase price of Product a nonexclusive, nontransferable, license for Ordering Activity’s own internal use of the Software. Possible Product specific limitations to the license referred above are defined in Order Confirmation and License File. If Hardware is delivered, Ordering Activity is entitled to use the Software only on the Hardware on which it was pre-installed and only in accordance with the relevant end user documentation provided by Contractor through Stonesoft. Permanent License;

Or

Subject to the payment of the periodical price of Product; a nonexclusive, nontransferable, license for Ordering Activity’s own internal use of the Software. The Periodical license is valid from the creation of the license until the end of the agreed period. Possible Product specific limitations to the license referred above are defined in Order Confirmation and License File. This license shall expire automatically and the ability to access and use Product will terminate at the end of the agreed period. Periodical License.

1.2 Ordering Activity may make a reasonable number of back-up copies of the Software and any future upgrades. Ordering Activity will reproduce all confidentiality and proprietary notices on each of these copies. Ordering Activity may not (or permit others to) otherwise copy, reproduce, transfer, assign, sub-license, distribute, translate, modify, adapt, decompile, decipher, disassemble or reverse engineer the Software except to the extent expressly authorized by law.

1.3 Should Ordering Activity purchase only Software to be used together with other hardware than specified in this Attachment A, Ordering Activity may use Software only for the number of IP addresses (actual number of IP addresses on the trusted side of the firewall calculated without any technology changing or hiding the IP address information) specified in the specific purchase order and related Order Confirmation.

1.4 License to Data: Ordering Activity acknowledges that Ordering Activity’s use of the Software will provide Ordering Activity access to certain URL data (the “Data”) and a hosted URL categorization service (the “ Service”) and Ordering Activity’s use of the

Data and Service is subject to the same license terms as apply to the Software, with the additional restrictions that Ordering Activity may not:

- a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Data available to any third party;
- b) modify or make derivative works based upon the Data;
- c) create Internet "links" to the Data or Service or "frame" or "mirror" the Data or Service on any other server or wireless or Internet-based device;
- d) utilize the Data or Service in order to:
 - i. build a competitive product or service;
 - ii. build a product using similar ideas, features, functions or graphics;
 - iii. copy any ideas, features, functions or graphics.

2. SOFTWARE MAINTENANCE AND SUPPORT

2.1 Contractor through Stonesoft provides support and maintenance service and future upgrades for the Software for so long as these services are generally available.

2.2 Software is sold either as a part of Stonesoft appliance or a software solution to be used in any compatible third party hardware. Contractor does not guarantee that the capacity of the appliance or the third party hardware will support all future features of the software or that all new upgrades will be compatible with the appliance or the third party hardware. However, Contractor will support licensed Software either in the form of making new upgrades compatible with Stonesoft appliance or providing support to the previous upgrade, until the end of the agreed support and maintenance period.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Title to the Software and the Data and all patents, copyrights, trade secrets and other proprietary rights in or related thereto are and will remain the exclusive property of Contractor and its licensors and subcontractors, whether or not specifically recognized or perfected under the laws of the country where the Software is used or located. Ordering Activity will not take any action that jeopardizes such proprietary rights or acquire any right in the Software, except the limited license specified in this Attachment A. Contractor and its licensors will own all rights in any copy, translation, modification, adaptation or derivation of the Software and Data, including any improvement or development thereof.

4. WARRANTIES AND WARRANTY DISCLAIMERS

4.1 Contractor represents and warrants to Ordering Activity that (a) it has all necessary right, title interest and authority to enter into this Attachment A and to grant Ordering Activity the rights hereunder; and (b) the Software will substantially conform to its specifications.

4.2 Contractor provides support and maintenance services for the Products. Under the agreed support and maintenance period or at least a period of one year after the delivery date of the Product, (Hardware Warranty Period) Contractor warrants that the Hardware is free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, materially in accordance with the documentation provided with the Hardware.

4.3 Ordering Activity's remedy, and Contractor's liability for defective Hardware shall be, solely upon confirmation of a defect or failure of Hardware to perform as warranted, to replace the nonconforming Hardware. Replacement Hardware is warranted to be free of defects in material or workmanship for the remaining time of the Hardware Warranty Period of the original Hardware. All defective Hardware, which has been replaced, shall become the property of Contractor.

4.4 Contractor does not warrant that the Hardware will be locally certified for electrical compliance in any country outside of the where to buy list of countries at Stonesoft's Website at www.stonesoft.com. Any use or distribution of any Hardware outside of the countries listed at the Website, will void any warranty extended hereunder, express or implied.

4.5 This limited warranty is void if the defect has resulted from accident, abuse, or misapplication or any other use of the Products not consistent with the terms and conditions of this Attachment A.

4.6 The Products are not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage or environmental damage (collectively, "High Risk Activities"). Contractor expressly disclaims any express or implied warranty of fitness for High Risk Activities.

4.7 EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONTRACTOR DOES NOT WARRANT

THAT THE PRODUCTS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED 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 Ordering Activity.

EXHIBIT A – STONESOFT SUPPORT AND MAINTENANCE SERVICES

1. SCOPE OF APPLICATION

1.1 These Exhibit A terms and conditions shall apply to Support and Maintenance Services to software programs or systems and shall be referred to as "Attachment A".

1.2 In this Attachment A, the supplying party shall be hereinafter referred to as "Contractor" or "Contractor through Stonesoft" and the purchasing party as the "Ordering Activity."

2. DEFINITIONS

2.1 "Agreement Document" means any agreement made either in form of a written order together with a written confirmation of order or in form of a separate agreement signed by both parties.

2.2 "Appliance" means those commercially available Stonesoft Products consisting of both a hardware component and Licensed Software.

2.3 "Ordering Activity Contact" means a contact person designated by the Ordering Activity in accordance with Section 8.1.

2.5 "Error" means any failure of the Licensed Software to conform in any material respects to its specifications.

2.6 License Key(s) or "License File(s)" mean the code(s) or file(s) provided to Ordering Activity by Contractor through Stonesoft which enables the Licensed Software to operate on the Licensed Server.

2.7 "License Key Delivery Date" means the date Contractor through Stonesoft delivers the License Key to Ordering Activity depending on the case. The License Key will be delivered electronically within three days from the date of delivery of the Product. In order to receive the actual services Ordering Activity has to activate the license using the License Key.

2.8 "Licensed Software" means the software licensed to the Ordering Activity by Contractor including the software program, original electronic media and all accompanying manuals and other documentation related to the Licensed Software together with all enhancements, upgrades, and extensions thereto.

2.9 "Office Hours" means hours between 9:00 and 17:00 from Monday through Friday of the Contractor through Stonesoft's support operation unit closest to the Ordering Activity, excluding weekends and Public holidays.

2.10 "Product" means Licensed Software and/or Appliance depending on the case.

2.11 "Response Time" for Support Request is the time starting when Support Request is delivered to Contractor through Stonesoft and ending when Stonesoft starts working on the problem and/or problem resolution. Same response time applies to subsequent communication.

2.12 "Service Description" means the Stonesoft Service Description valid at any given time for a specific Product as described herein.

2.13 "Service Hours" means the hours during which the Services are available for the Ordering Activity.

2.14 "Services" means the maintenance and support services and hardware replacement services, when applicable, related to the Product provided by Contractor through Stonesoft to the Ordering Activity as in detail described in applicable Service Descriptions.

2.15 "Support Request" is a service request containing written information of the Ordering Activity's system and its network environment, and a detailed written description of the problem,

3. SCOPE OF THE SERVICES

3.1 Contractor through Stonesoft agrees to provide the Ordering Activity with the Services described in the applicable Service Description(s) in a good workmanlike manner and using its own working methods.

3.2 The Services will be given only to releases of the Licensed Software that are generally supported by Contractor through Stonesoft and only to problems that are reproducible in the release of the Licensed Software running unaltered in an environment supported by Stonesoft.

3.3 Contractor through Stonesoft will support the latest release of the Licensed Software and the previous release for a period of six (6) months following the subsequent release. For end-of-life Products Stonesoft will provide support up to three years upon advance payment for a fixed period. Such information will be available at Stonesoft's website ([http:// www.stonesoft.com/support/](http://www.stonesoft.com/support/)).

3.4 The annual Service Fee shall not cover and Contractor through Stonesoft has no obligation to correct Errors that have been caused by (a) amendments, alterations or modifications to the Product made by the Ordering Activity or third parties (b) using the Product in a manner that is in violation of the licensing terms described in this Attachment A or contrary to instructions given by the Stonesoft (c) the Ordering Activity's combining or merging of the Licensed Software with any hardware or software not identified as compatible by the Stonesoft or (d) a third-party product. In case it is concluded that a problem identified in a Support Request falls within the category mentioned above, Contractor is entitled to charge the Ordering Activity for the troubleshooting and identification of the problem in accordance with its then current GSA price list. Such Error(s) will be corrected only if so agreed between Stonesoft and the Ordering Activity in which case Contractor will charge the Ordering Activity on a time and material basis in accordance with its then current GSA price list.

3.5 Any other services, such as (a) any on-site support or assistance at Ordering Activity's premises, (b) installation of Licensed Software (c) consulting, (d) any Stonesoft pre-sales operations or training or (e) preparation or delivery of any other documentation than the existing product documentation (for example instructions for Ordering Activity specific tasks) are available as advised by support operation unit closest to the Ordering Activity. These services are charged separately at then current GSA prices.

4. SERVICE HOURS AND RESPONSE TIMES

4.1 The different alternatives for Service Hours and Response Times shall be given in the applicable Service Description(s). In case not otherwise agreed in the Agreement Document the Service Hours will be the Office Hours.

5. ORDERING ACTIVITY RESPONSIBILITIES

5.1 Unless otherwise agreed in writing, the installation of the Products delivered under this Attachment A shall be taken care of by the Ordering Activity.

5.2 The Ordering Activity will ensure that Contractor through Stonesoft receives all necessary and requested information for the performance of the Services, in the agreed form and in accordance with the agreed time schedule. Such information includes at least information of the Ordering Activity's system and its network environment, a detailed written description of the problem, and sufficient evidence of the current support and maintenance contract. The Ordering Activity shall be responsible for the correctness of the information supplied to Stonesoft from the Ordering Activity.

5.3 Ordering Activity agrees to perform certain duties and tasks as may be reasonably directed by Contractor through Stonesoft in response to the Support Requests such as, but not limited to system restarts, recording of error information and traffic dumps, running of executable diagnostic tests, if any, and running operational readiness tasks.

5.4 The Ordering Activity shall always be responsible for making backup copies of his system(s), and for checking their operation as well as for all disaster recovery measures. Contractor shall not be liable for any loss or damage caused by damaged, changed, altered or disappeared data contained in the Ordering Activity's system(s) nor for the losses caused by their re-creation.

6. PROPRIETARY RIGHTS

6.1 Title to all intellectual property rights in the Product(s) delivered to the Ordering Activity by Contractor under this Attachment A, including all patents, copyrights and other intellectual property rights, shall at all times remain with Contractor or third parties. The Ordering Activity is granted a license to use the Product(s) under this Attachment A covering the original Licensed Software.

6.2 The Ordering Activity warrants that it has a valid License to the Licensed Software during the term of this Attachment A and agrees to confirm this in writing if so requested by Contractor through Stonesoft.

7. ORDERING ACTIVITY CONTACT AND COMMUNICATION

7.1 The Ordering Activity may designate persons as Ordering Activity Contact(s) for Contractor through Stonesoft. The Ordering Activity shall notify Stonesoft on any changes in the Ordering Activity Contact. Unless otherwise described in the Service Description(s) all communication related to the Services, including Support Requests, shall be delivered to Stonesoft first and foremost by email or otherwise in writing as advised by Stonesoft from time to time. Only secondarily shall communication take place by phone using numbers assigned to Ordering Activity by the Stonesoft.

7.2 The language for all communication related to the Services shall be English.

7.3 The Ordering Activity acknowledges that any information communicated through public networks such as internet or fax may be altered, modified, damaged or intercepted by third parties during its transmission and that the Contractor through Stonesoft will not be held liable for any damage thus incurred.

SERVICE DESCRIPTION FOR SUPPORT AND MAINTENANCE SERVICES

HANDLING OF SUPPORT REQUESTS

Communication

All communication to Contractor through Stonesoft shall be channeled through Authorized Ordering Activity Contacts by e-mail, telephone, or by using a web form. The email address and phone numbers are available at Stonesoft's web site (http://www.stonesoft.com/support/Contact_Information). A web form for Support Requests is available at Stonesoft's website (http://www.stonesoft.com/support/Request_Support/).

The naming and updating of Authorized Ordering Activity Contacts is required in order (a) for Contractor through Stonesoft to ensure that the information in the call is from a legitimate customer source and (b) to provide Stonesoft with up-to-date customer contact information for notifications regarding upgrades, patches, dynamic updates, and other enhancements as they become available.

The preferred way of communication is always by email. The secondary form of communication is by telephone. Any telephone contacts requiring further communication are transferred to e-mail for tracking purposes and to ensure service level.

Call Handling

Upon receiving a support request, Contractor through Stonesoft shall confirm that the request includes both customer and technical information necessary for a timely and efficient response. The Ordering Activity shall receive written communication by email from Stonesoft when the call:

- is first received or logged by Stonesoft (automatic notification); or
- requires more information during the troubleshooting process; or
- is responded to and/or resolved; or
- is escalated as described in chapter 2.3.

SUPPORT SERVICES FOR THE SOFTWARE

Scope of services

Support Services for the software consist of technical support and assistance by e-mail and telephone to the Ordering Activity using the product. Support Services include receiving, classifying, and logging Support Requests and the assignment thereof to Contractor through Stonesoft technical specialists who are responsible for troubleshooting the problem until it is resolved.

A problem is considered resolved when:

- The software conforms substantially to its specifications; or
- The Ordering Activity has been advised on how to correct or bypass the error; or
- The Ordering Activity has been informed that the correction to the error will be available through a future software upgrade, or through a future dynamic update package, or through a documentation update; or
- It has been discovered that the problem is a hardware failure and, in case of a StoneGate appliance, the RMA process has been started to replace the unit or the spare part in question; or
- It has been discovered that the problem falls within the category not covered by the service fee, and the customer has been notified thereof.

If a class 1 or class 2 problem (as defined in chapter 2.2) is to be solved with a future software upgrade, or through a future dynamic update package, or through a documentation update, Contractor through Stonesoft will deliver commercially reasonable efforts to advise the Ordering Activity on how to bypass the error.

Contractor through Stonesoft does not guarantee problems will be fixed in any specific time frame due to the fact that Stonesoft products operate in multi vendor environments. It is the goal of Stonesoft to deliver commercially reasonable efforts to satisfactorily resolve each incident using the guidelines of the in Call Classification (as described herein below).

The GSA service fee does not cover (a) any on-site support or assistance at Ordering Activity's premises, (b) installation of Stonesoft products, (c) consulting, (d) any Stonesoft pre-sales operations or training, or (e) preparation or delivery of any other documentation than the existing product documentation (for example instructions for Ordering Activity specific tasks).

Call Classification

The following classification will be used to identify the call based on its severity:

Class 1 - Critical Technical Issues consist of a total loss of core functionality in the licensed software or down systems that severely affect the Ordering Activity's business operations. Contractor through Stonesoft and Ordering Activity are willing to provide full-time resources to resolve the issue during the service hours specified in the agreed support service level.

Class 2 - Major Technical Issues include severe performance problems in the licensed software or loss of data that has a noticeable impact on Ordering Activity business operations. Contractor through Stonesoft and Ordering Activity are willing to provide resources during standard business hours to resolve the issue according to the agreed support service level.

Class 3 - Other Issues consist of technical issues that have minor or no impact on business operations, or bug fix and enhancement requests pertaining to software maintenance. Requests for technical assistance during usage of the product

always fall into this category. Contractor through Stonesoft and Ordering Activity are willing to provide resources during standard business hours to provide assistance and information to solve the issue.

Call Escalation

Technical issues that cannot be solved by the Regional Support Center are escalated (based on the above specified Call Classification and the agreed Support Service Level either to senior technical specialist(s), technical product management, or Stonesoft Research and Development. Escalation notifications are sent to Support Management to provide additional resources into Class 1 or Class 2 problem resolution. Contractor through Stonesoft CTO is informed about Class 1 problems by Support services as defined above to provide additional resources.

SOFTWARE MAINTENANCE

Contractor through Stonesoft shall make new upgrades available for the licensed software. These upgrades include generally available versions, releases, builds, patches and dynamic updates, but exclude new products, and new versions that are licensed and/or charged separately.

Stonesoft licensed software is part of StoneGate appliances. It can also be purchased as a software solution and used in any compatible third party hardware. Contractor through Stonesoft does not guarantee that the capacity of the sold appliance or third party hardware for which the software solution was purchased will support all future features of the new upgrades or that all new upgrades will be compatible with the purchased StoneGate appliances or third party hardware. However, Stonesoft will provide support to StoneGate appliances until the end of the agreed support period either in form of making new upgrades compatible with StoneGate appliances covered by the support and maintenance agreement or in form of providing support to the previous upgrade.

All upgrades provided to the Ordering Activity hereunder shall be governed by this Attachment A terms of the applicable license and shall be considered licensed software.

HARDWARE REPLACEMENT SERVICE

All StoneGate appliances have a limited hardware warranty for 15 months starting from the delivery date, as described in Exhibit B herein.

Hardware replacement service is an extension to the limited hardware warranty and provides better service level to the Ordering Activity. Hardware replacement service is available to Ordering Activity for up to 39 months from the license key delivery date if the Ordering Activity has a valid support and maintenance contract. Hardware replacement service is subject to the terms of the applicable hardware warranty document, with the exception of Warranty Claims, and the following terms and conditions:

Contractor through Stonesoft will, at its option, replace either defective hardware unit or component with a replacing hardware unit or spare part component that is either new or equivalent to new. Stonesoft may, at its option, use other than the defected product model for replacement unit provided that the replacement model has equivalent or better functionalities than the defected product model.

The defective hardware unit or component must be returned to Contractor through Stonesoft according to Stonesoft's RMA procedure at customer's expense. The RMA procedure description can be found in Exhibit C herein. The Ordering Activity must return the product properly packaged, including the entire original hardware unit. In the case of a defective component it is sufficient that only the component in question is returned properly packed.

Please note that destination country importation, compliance with the relevant export controls, and customs clearance may impact actual delivery times.

SUPPORT SERVICE LEVELS

Contractor through Stonesoft provides the following service levels and response times for its services.

Premium Support

Premium Support offers the Ordering Activity 24x7 call handling and problem resolution as well as call classification and escalation. Support requests and further communication are responded to within two (2) hours at any given time (24x7). Hardware replacement services are provided during the business hours.

Resolution and troubleshooting is undertaken on a continuous basis at Stonesoft's Regional Support Centers until the problem is resolved as described in 2.1 above.

Contractor through Stonesoft will ship replacement hardware (a hardware unit or a spare part) within 24 hours (excluding weekends and public holidays) from the receipt of the duly signed Replacement Return Confirmation Form, which is sent to Ordering Activity after the RMA process is started. If the Ordering Activity has purchased a Spare Part Unit (SPU) for their StoneGate appliance, they can replace the defective appliance with SPU appliance and transfer the license to it. Stonesoft will ship the replacement as described above within 3 working days from the receipt of the duly signed Replacement Return Confirmation Form.

If the Ordering Activity has purchased a Spare Part for the defected component in a StoneGate appliance (when applicable), they can replace such a faulty part with a Spare Part if needed. Contractor through Stonesoft will ship the replacement Spare Part within 3 working days from the receipt of the duly signed Replacement Return Confirmation Form.

Basic Support

Basic Support offers the customer 8/5 call handling and problem resolution as well as call classification and escalation. Support Requests and further communication are responded to within one (1) business day based on the office hours of the Stonesoft regional technical support closest to the Ordering Activity. Resolution and troubleshooting take place during same office hours. Hardware replacement services are provided during the business hours.

Contractor through Stonesoft will ship replacement hardware (a hardware unit or a spare part) within 48 hours (excluding weekends and public holidays) from the receipt of the duly signed Replacement Return Confirmation Form, which is sent to Ordering Activity after the RMA process is started.

If the end-user has purchased a Spare Part Unit (SPU) for their StoneGate appliance, they can replace the defective appliance with SPU appliance and transfer the license to it. Contractor through Stonesoft will ship the replacement as described above within 3 working days from the receipt of the duly signed Replacement Return Confirmation Form.

If the Ordering Activity has purchased a Spare Part for the defected component in a StoneGate appliance (when applicable), they can replace such a faulty part with a Spare Part if needed. Contractor through Stonesoft will ship the replacement Spare Part within 3 working days from the receipt of the duly signed Replacement Return Confirmation Form.

EXHIBIT B – STONESOFT LIMITED HARDWARE WARRANTY

Limited Hardware Warranty

Contractor warrants that the Hardware shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, materially in accordance with the documentation provided with the Hardware for as long as the Ordering Activity has a valid Support and Maintenance agreement or at least for a period of one year after the delivery date of the StoneGate Appliance.

Ordering Activity's remedy, and Contractor's liability for defective Hardware shall be, solely upon confirmation of a defect or failure of Hardware to perform as warranted, to replace the nonconforming Hardware. All replacement Hardware furnished to Ordering Activity under this Warranty shall be new or reconditioned to be functionally equivalent to new. Replacement Hardware is warranted to be free of defects in material or workmanship for the remainder of the warranty period of the original Hardware. All defective Hardware, which has been replaced, shall become the property of Contractor.

Warranty Claims

By submitting a warranty claim, Ordering Activity accepts and agrees to be bound by all the terms and conditions contained herein.

To request warranty replacement, contact Contractor through Stonesoft's Customer Support within the warranty period. If the Product is defective Stonesoft will issue a Return Merchandise Authorization ("RMA") documents and number for the return delivery. The defective Product must be packed in its original or equivalent packaging with the RMA number clearly marked on the outside of the package. In no event will Stonesoft accept any returned Products without a valid RMA number. The defective Product must be shipped to Stonesoft or its representative. Stonesoft will ship the replacement product freight prepaid upon receiving the RMA documents from the Ordering Activity.

Warranty Restrictions and Disclaimer

Warranty shall be void due to any of the following: (1) if the Product has been opened, modified, altered, or repaired, except by Contractor through Stonesoft or its authorized agents, (2) if the Product has not been installed or maintained or used in accordance with instructions provided by Stonesoft, (3) misuse, abuse, accident, thermal or electrical irregularity, theft, vandalism, fire, water or other peril, (4) damage caused by containment and/or operation outside the environmental specifications for the Product, (5) connection of the Product to other systems, equipment or devices or use with other software (other than those specifically approved by Stonesoft) without the prior approval of Stonesoft, or (6) removal or alteration of identification labels on the Product or its parts (7) failure to comply with all warranty return terms and conditions as set forth herein.

Contractor through Stonesoft shall not be responsible for any software, information, or memory data of Ordering Activity contained in, stored on, or integrated with any Product returned to Stonesoft for replacement.

The Hardware is not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Hardware could lead directly to death, personal injury, or severe physical or property damage or environmental damage (collectively High Risk Activities). Contractor expressly disclaims any express or implied warranty of fitness for such High Risk Activities.

Contractor does not warrant that the Product is locally certified for electrical compliance in any country. Any use or distribution of

Products outside of the Warranty Territory will void the Warranty extended hereunder, express or implied.

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE HARDWARE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONTRACTOR DOES NOT WARRANT THAT THE HARDWARE WILL MEET THE ORDERING ACTIVITY'S REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ORDERING ACTIVITY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED 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 Ordering Activity.

EXHIBIT C – RETURN MATERIAL AUTHORIZATION (RMA) INSTRUCTIONS

These instructions are provided to assist Ordering Activity with replacement service for the StoneGate appliance in the unlikely event that Ordering Activity experience problems with the hardware. If Ordering Activity encounters problems with the hardware, follow these steps:

1. Please contact Stonesoft Support
2. Be prepared to provide the proof of serial (POS) number and serial number that are attached to the appliance. Ordering Activity can also see the POS by opening the License Manager in Ordering Activity's StoneGate Management Center.

Please also provide:

- Company name and address
 - Contact name
 - Contact telephone number and email address
 - Detailed problem description
3. Upon receiving above information, Contractor through Stonesoft Support will first confirm whether there is a hardware problem that is covered by warranty or replacement service. If this is the case, Ordering Activity will be issued a Return Material Authorization (RMA) number and additional instructions.
 4. Fill in the StoneGate Hardware Replacement Return Confirmation form (received with RMA number) and return it by FAX or email. If the signed form haven't been received by Contractor through Stonesoft within fourteen (14) days from RMA authorization the RMA will be automatically cancelled.
 5. After receiving the signed Hardware Replacement Return Confirmation form, Contractor through Stonesoft will ship the replacement product.
 6. Pack the defective product in its original packaging or other equivalent packaging sufficient to prevent damage to the product during shipment.

The delivery address is:

*Stonesoft Inc.
1050 Crown Pointe Parkway
Suite 900
Atlanta, GA 30338
USA*

Please note that destination country importation, compliance with the relevant export controls, and customs clearance may impact actual delivery times.

The RMA number must be clearly marked on the outside of the package along with the freight declaration. Contractor through Stonesoft will reject any returns without a valid RMA number. Shipment of defective product must be prepaid and insured against loss or damage.

TIBCO Software Federal, Inc.
3141 Fairview Park Drive, Suite 600
Falls Church, VA 22042

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

1. **Scope.** This Rider and the attached **TIBCO Software Federal, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - 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**

TIBCO SOFTWARE FEDERAL, INC.

TIBCO SOFTWARE FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS

END USER LICENSE AGREEMENT FOR U.S. FEDERAL GOVERNMENT BUSINESS (“AGREEMENT”)

PLEASE READ CAREFULLY: THIS AGREEMENT IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR) AND IS APPLICABLE TO TIBCO SOFTWARE LICENSES, EQUIPMENT, CLOUD OR HOSTED SERVICES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE “PRODUCTS”) ACQUIRED BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES (“GOVERNMENT” or “GOVERNMENT END USERS”), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY, WITH GOVERNMENT END USERS, “GOVERNMENT CUSTOMER”). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES (“SERVICES”) ACQUIRED FROM TIBCO SOFTWARE FEDERAL, INC. (“TSFI”) RELATING TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, IF PRODUCTS AND/OR SERVICES ARE BEING ACQUIRED FROM TSFI PURSUANT TO A NEGOTIATED AGREEMENT, THAT NEGOTIATED AGREEMENT SHALL CONTROL.

1. The following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) are contrary to applicable Federal law. In the event any provision of this Agreement is contrary to or unenforceable under applicable Federal law, the Federal law shall control. For Government End Users, this Agreement supersedes and replaces any shrink wrap, click wrap, or click through terms (“Automated Terms”) that may be presented with Products or Services and any such Automated Terms shall not apply.
2. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in Appendix A. “Order Form” means any purchase order or similar document, written agreement, or a web store or website order or registration requesting Products or Services. “Purchase Date” means the date the Order Form is accepted by us and in the case of a web store or web site transaction, the date of your download or access of a Product. If proprietary source code is included as part of the standard delivery of a Product and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. “Updates” means Product bug fixes, enhancements, and updates, if and when made generally available by us as part of Maintenance. “We” or “Us” refers to TSFI, a subsidiary corporation of TIBCO Software Inc. (“TIBCO”). “You” or “Your” refers to the Government Customer acquiring Products or Services pursuant to this Agreement.
3. Alpha, Beta, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed at no charge for demonstration or evaluation purposes or for alpha or beta testing, then, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (a) use of the Products shall be solely for such purposes, (b) the Products shall not be used or deployed in a production or development environment, and (c) such use shall automatically terminate upon the earlier of (i) thirty (30) days from the date TSFI grants the right to install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended. If the Products are provided or accessed for Developer Evaluation, (a) use of the Products solely shall be for development evaluation purposes, (b) such use shall not be in a Production environment and (c) such use shall automatically terminate upon the earlier of (i) ninety (90) days from the date TSFI grants the right to receive, install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended.
4. License Grant. The Products are the property of TIBCO Software Inc. (“TIBCO”) or its licensors and are protected by copyright and other laws. TSFI is a subsidiary of TIBCO. While TIBCO continues to own or have license rights to the Products, TSFI is authorized to and hereby grants you a limited, non-transferable (except as permitted herein), non-exclusive license, subject to the terms and conditions of this Agreement, to use the Number of Units set forth in the Order Form solely for your internal business use.
5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:
 - Alpha, Beta and Evaluation - thirty (30) days
 - Developer Evaluation – ninety (90) days
 - Hosted Services - one (1) year
 - Cloud - one (1) year

- Software purchases on a term limited basis - one (1) year

If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must immediately cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

7. Equipment Purchase.

A. Purchase. When we issue you a quotation and accept your Purchase Order for the purchase of Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described therein. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. For a feature, conversion or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, the return of the Equipment or parts forms part of your consideration to us and we reserve all rights under applicable law regarding said Equipment or parts.

B. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery by us to our designated freight carrier, FCA TIBCO's premises (Incoterms 2000). All freight, insurance and other shipping expenses shall be paid to the freight carrier by us. Any shipping or handling charges to be paid by you shall be as identified on the accepted Purchase Order. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you via the Hosted services as soon as we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider failures or delays ("Force Majeure"). Hosted Services are provided in accordance with applicable laws and government regulations.

9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOCommunity. You agree to and accept the Terms of Use for TIBCOCommunity (http://www.tibco.com/themes/tibcotucon/resources/html/terms_of_use.html) if you use the credentials to access the TIBCOCommunity site EXCEPT that any provision of the Terms of Use for TIBCOCommunity that is contrary to, or unenforceable against a Government End User under, applicable Federal law shall be of no effect for Government End Users; for Government End Users, Federal law shall apply regardless of any choice of law or venue language in the TIBCOCommunity Terms of Use. Certain Software Products may be provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO-approved third party service provider ("Provider") for the Cloud and for the technical operation of the content of your account.

10. Hosted Services and Cloud Restrictions.

A. In connection with your use of Hosted Services or a Cloud, you shall, in addition to the Restrictions below (i) be responsible for your users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and the means by which you acquire and disclose your data, (iii) not store or transmit infringing, libelous, or otherwise unlawful or tortious material or malicious code, nor store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud, (v) use reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or their related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. In the event that you receive any notice claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates a third party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO's General Counsel.

B. You will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider's or TIBCO service in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. No software or content provided by you or your users in connection with your use of Hosted Services or the Cloud may contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. Except as required by applicable law, we are not responsible for Provider services, unauthorized access to your data or content, or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.

11. Restrictions.

To the extent consistent with the provisions of FAR 52.227-19 (Commercial Computer Software License), the following restrictions shall apply to Government End Users. Where a restriction is inconsistent with the provisions of FAR 52.227-19, the FAR provisions shall control and the restriction shall not apply to Government End Users. For other customers, the restrictions shall apply.

A. You shall not (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) use any Software not listed in an Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (f) use the Products in connection with ultrahazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you or a third party; or (g) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Products. You may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, you agree to observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist with or conduct such activity on your behalf and at your expense.

B. Any additional license parameters applicable to particular Products are set forth in Appendix B.

12. Proprietary Notices. The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, Documentation and Materials; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

13. Extraordinary Corporate Event. For Government End Users, the rights contained at FAR 52.227-19 shall apply in lieu of the following provision. For customers other than Government End Users, to the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities which were added to your organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by our respective duly authorized officers.

14. Maintenance.

A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) does not apply. THE TERMS OF ANY MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Cloud or Hosted Services), is provided under the policies set forth in the Maintenance Program Guide attached as Appendix C for Products other than Equipment, and at Appendix D for Equipment.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been paid when properly due and owing.

15. Consulting Services.

A. You may procure installation, configuration, training or other consulting or support services ("Consulting Services") either through a Purchase Order issued against a Consulting Services quotation, or through a work order executed by authorized representative of both parties ("Work Order"). Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6).

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one (1) copy received by each attendee and may not be duplicated.

C. In the event that you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you

are granted a limited, non-transferable and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use: provided, however, that the copyright notices and any other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

16. Limited Warranty.

The following Limited Warranty provisions shall apply to Government End Users to the extent permitted by applicable Federal law, including FAR

12.404(b)(2); to the extent that these limitations are not permitted or are unenforceable under applicable Federal law, they shall be of no force or effect for Government End Users. For all other customers, the following Limited Warranty provisions shall apply.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN PRODUCTS

THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS", IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE PRODUCTS WITH WHICH IT IS PROVIDED TO YOU. SUCH THIRD PARTY SOFTWARE IS PROVIDED SOLELY AS AN ACCOMMODATION TO YOU AND YOU ARE UNDER NO OBLIGATION TO USE SUCH THIRD PARTY SOFTWARE. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY PRODUCTS OR SERVICES, THAT THE PRODUCTS WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS, THAT ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE PRODUCT FUNCTIONALITY OR SERVICES WILL MEET YOUR REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY ON TSFI'S OR TIBCO'S BEHALF.

17. Indemnity. For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.

For customers other than Government End Users, if you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party. We will indemnify and hold you harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against you in a final judgment provided that you promptly notify us in writing of such claim, we have the exclusive right to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option and expense, shall (a) procure for you the right to continue to use the Software, or (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent that (x) any claim is based on or attributable to modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

18. Limitation of Liability.

FOR GOVERNMENT END USERS, THE FOLLOWING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAW. TO THE EXTENT THAT THESE PROVISIONS ARE INCONSISTENT WITH APPLICABLE FEDERAL LAW, THEY SHALL BE OF NO FORCE OR EFFECT WITH REGARD TO GOVERNMENT END USERS.

FOR CUSTOMERS WHO ARE NOT GOVERNMENT END USERS, THE FOLLOWING SHALL APPLY:

A. EXCEPT AS PROVIDED UNDER THE INDEMNITY ABOVE; OR IN CONNECTION WITH THE MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, TRADE SECRETS; DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR INTENTIONAL OR GROSS NEGLIGENCE (THE "EXCLUDED MATTERS"), IN NO EVENT WILL EITHER PARTY OR TIBCO'S LICENSORS BE LIABLE FOR ANY LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, LOST REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, DOWNTIME COSTS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPE OF DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PRODUCTS, OR THE PROVISION OF ANY MAINTENANCE, CONSULTING SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES OR DAMAGES.

B. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY'S LIABILITY TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING ACTIVE OR PASSIVE NEGLIGENCE), BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, EXCEED THE GREATER OF FIFTY THOUSAND DOLLARS (\$50,000 USD) OR THE PRICE PAID BY YOU UNDER THE APPLICABLE ORDER FORM. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to EXPRESS remedies provided in the Agreement.

C. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED REMEDY OR LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

19. Confidentiality.

For Government End Users, confidentiality obligations shall be pursuant to the Freedom of Information Act and other applicable Federal law, and Sections 19A through 19E, below, shall not apply. TIBCO software Products delivered under this Agreement constitute commercial computer software products as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-19; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial and confidential or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these data may be reproduced by the Government with the express limitation that they will not, without written permission of TSFI, be used for purposes of manufacture nor disclosed outside the Government.

For customers other than Government End Users, the following provisions shall apply:

A. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data (as defined in Section B below) and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other's Confidential Information. The parties further agree that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations ("Protected Data"), we agree to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at http://www.tibco.com/customer_privacy_security_statement.jsp (the "Statement"). The policies and procedures set forth in the Statement as well as those set forth in the Data Protection Policy Statement at http://www.tibco.com/resources/data_protection_statement.pdf are in place to meet our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by you of Products or Materials shall not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business to business communications in connection with this Agreement. In the event you or your users wish to opt-out from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at <http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af5338448782d1fa356e>. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that you provide to us about our Products or their performance (collectively, "Feedback") shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of any kind to you, and you waive any rights whatsoever in or to all Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licensor Software, Documentation and Materials in any form in violation of applicable export or import laws.

21. Government Use. The Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is restricted according to the terms of this Agreement. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS AGREEMENT, AND AS REQUIRED BY FAR 12.302(b), THE FOLLOWING PROVISIONS FOUND AT FAR 52.212-4 SHALL APPLY:

- (1) Assignments; (2) Disputes;
- (3) Payment (except as provided in subpart 32.11); (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

22. Entire Agreement. For Government End Users, to the extent permitted by applicable Federal law and regulation, this Agreement constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties.

For other customers, this Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties. Except for additional terms you have agreed to in connection with our web stores or web sites,

none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary.

Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

23. Termination.

Between TSFI and Government End Users, termination shall be pursuant to FAR 52.212-4(l) (Termination for the Government's convenience) and 52.212(m) (Termination for cause); no other termination rights shall apply, including paragraphs 23(A) through (F). Nothing in the foregoing, however, shall be understood to grant the Government the right to use Products or Services acquired on a term basis beyond the term set forth in the applicable Purchase Order.

For customers other than Government End Users:

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party; (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for Consulting Services, upon ten (10) days prior written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have pre-paid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider's termination without cause (e.g. a copy of Provider's notice of termination). Following receipt of such written notice, we will refund the pre-paid unearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the unearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the unearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, or Hosted Services under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed such Software, Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials.

F. Termination of this Agreement, any license, Cloud, or Hosted Services, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled "Termination", "Limited Warranty" or "Indemnity", all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. The parties' rights and obligations under this section and sections entitled "Limited Warranty", "Indemnity", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General", "Governing Law" and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version of or derivative of the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager and TIBCO® ActiveFulfillment (and each of the foregoing, when included in any Bundle or Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that you may only use in conjunction with the Software and may be subject to additional terms as set forth in Appendix B.

26. General.

A. As between TSFI and the Government, interest in connection with this Agreement shall be pursuant to the provisions of FAR 52.212-4(i)(6).

B. As between TSFI and other customers: All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date or, for any other amounts coming due hereafter, net 30 from our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of our income tax. You agree to pay all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. Except as set forth in the sections entitled "Limited Warranty", "Indemnity" and "Termination" all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent (1 ½%) per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this Agreement to the extent caused by Force Majeure.

C. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also being sent to that party's General Counsel.

27. Governing Law. For Government End Users, this Agreement shall be governed by applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, with venue in the Federal courts of competent jurisdiction. For other customers, to the extent permitted by law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded from application hereto.

Addenda:

Appendix A	Definitions
Appendix B	Product Parameters
Appendix C	Product Maintenance
Appendix D	Equipment Maintenance

TSFI EULA Appendix A -- Definitions

"Academic Bundle" means a Bundle which is licensed to an accredited education institution solely for educational use, teaching and individual student or faculty non-funded research purposes in Non-Production. Use in Production, or for the purpose of funded research or for any classes offered electronically via the internet or otherwise (i.e.: "on-line" classes) is prohibited. For the purposes of an Academic Bundle, Licensee may provide access to the Licensor Software products by students who are Named Users, subject to such Named Users agreeing to be bound by terms at least as protective of Licensor as the terms of this Agreement.

"Affiliates" means entities, regardless of corporate status, controlled by, controlling or under common control with Licensor or Licensee, respectively, or officers, directors, shareholders, employees or agents of any of the foregoing.

"Broker" means the component within the applicable Site Copy which schedules work for Engines in a GridServer® or FabricServer® environment. GridServer environment means at least one TIBCO DataSynapse GridServer® Broker and a pool of servers with the TIBCO DataSynapse GridServer® Engine executing grid services. FabricServer environment means at least one TIBCO DataSynapse FabricServer® Broker and a pool of servers with the TIBCO DataSynapse FabricServer® Engine managing enterprise applications.

"Bundle" means a collection of Licensor Software, listed in Licensor's quotation or price book, to be sold together under a collective name such as "XXX Bundle" which consists of X, Y and Z. The Licensor Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Licensor Software separately licensed by Licensee. In no event may the Licensor Software which comprises a Bundle be used on a standalone basis. A "Bundle" is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, such breach must be cured within ten (10) days of Licensor notifying Licensee in writing of the breach. In addition to the foregoing, where Bundle is used as the Unit type, Licensee's use is limited to the Number of Units and Unit type for each component which comprises the Bundle, as set forth in the bill of material for such Bundle.

"CICS Region" means a subdivided mainframe address space managed by CICS for resource allocation, resource sharing, and transaction execution, of which the resource definitions include the TIBCO EMS Client for z/OS.

"Cloud" means an internet based computing service offered by a Licensor approved third party, which permits users to make use of a hosted hardware and software environment, which includes, among other components, Licensor Software set forth in an Order Form.

"Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Licensor Software at any single point in time.

"Connection" means any network link or session established with Licensor software, directly or indirectly to any other entity, including but not limited to software, firmware or hardware. For TIBCO Rendezvous® and TIBCO SmartSockets®, "Connection" means any network protocol link established with such Licensor Software (directly or indirectly) to any other entity, including but not limited to software, firmware or hardware.

For TIBCO ActiveSpaces®, "Connection" means any session established directly or indirectly to a TIBCO ActiveSpaces® Metaspaces cluster instance.

For TIBCO DataSynapse Federator™, "Connection" means a web service session established to a TIBCO DataSynapse GridServer® Manager Instance or a TIBCO DataSynapse FabricServer® Manager Instance; for TIBCO DataSynapse™ Analytics or TIBCO® Cloud Analytics, a database session established to a TIBCO DataSynapse GridServer® Broker reporting database or TIBCO Silver® Fabric Manager reporting database; and for TIBCO® Data Quality Service Engine Named Application, any link or session established directly or indirectly (through any other middleware application) which calls to a named third party software application.

"Consumer Price Index" means (unless otherwise set forth in this Agreement or an Order Form) the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U).

"Connected Processor" means any processor that produces information consumed by the relevant Licensor Software product (excluding processors on devices such as routers, switches, proxies, HTTP or application servers configured to substantially pass-through information or messages to Licensor Software).

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

"Developer" means a Named User of a Licensor Software product other than for use only in Non-Production.

"Development License" for TIBCO Spotfire® Developer or TIBCO Spotfire DecisionSite® Developer means use by a Developer in accordance with the Documentation in Non-Production for the purposes of configuring analyses created with TIBCO Spotfire products and/or extending the TIBCO Spotfire product platform. The Development License includes the right to use resulting developments in conjunction with Licensee's right to use Licensor Software for Production purposes.

"Documentation" means text material that accompanies an item of Licensor Software on delivery, describing how to make use of that software. "Engines" means for GridServer products a single thread that processes tasks or services in a first in, first out (FIFO) queue, and for FabricServer products a single agent that manages the deployment and performance of an application. Typically, only a single engine runs on a single cpu/core so that the number of engines in the grid is the same as the number of cpu's/cores in a GridServer or FabricServer environment.

"Enablement License" means for use in connection with and for up to the Number of Units licensed of the TIBCO DataSynapse™ Licensor Software which contains the word "Edition" in the product name, and if a) an Application Enablement License, a license to deploy JavaEE applications, built on the applicable third party application server, or b) for an Enterprise Enablement License, a license to deploy or integrate with the applicable third party application, or in connection with Command Lind, to deploy custom or external applications. Enablement Licenses do not include Engines required for running third party applications or any integration software to mesh or permit the Licensor Software to function with such third party applications.

"Enterprise" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Enterprise in the Order Form, to be deployed by Licensee until the Enterprise Term Expiration Date set forth in the Order Form, (the "Enterprise Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Enterprise Term, Licensee's right to deploy shall not extend to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Enterprise Term, written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Enterprise Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Equipment" means a hardware appliance, obtained from or through Licensor, in which Licensor has caused the Licensor Software to be embedded, and which is listed on an Order Form under License Type "Lease" or "Purchase". Equipment shall have the same meaning as Licensor Software where Licensor Software is or has been used elsewhere in this Agreement. Licensor Software embedded in the Equipment is licensed solely to enable the Equipment to function in accordance with its Documentation.

"Extraordinary Corporate Event" means a corporate transaction which results in Licensee divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Licensee or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Licensor Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.

"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Licensor Software is installed or otherwise accessed by Licensee. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hosted Services" means online, internet based computing services provided by Licensor.

"Instance" means the smallest functionally-complete copy of Licensor Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers.

For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon, where each daemon is an operating system process with a unique process id.

"License Type" means the environment(s) in which the Licensor Software may be used (including without limitation, Production and/or Non- Production, Cloud or Hosted Services.

"Licensor Software" means the most current, generally available, object code version (or, in the case of Cloud, a machine and or disk image) of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates (as defined in the Maintenance Program Guide located at <http://www.tibco.com/services/support/default.jsp>) provided under Maintenance. Licensor Software does not include multiple Platforms if the software product is licensed on a Platform specific basis as designated in the Licensor Software product name or listed in an Order Form or purchase order. Licensor Software includes TIBCO Spotfire® Web-Based Training products and excludes TIBCO® Data Quality Postal Directory(ies) as set forth in an Order Form. Where the terms "TIBCO Software", "Spotfire Software", "TIBCO Spotfire Software", or "Software" (in connection with a Licensor click-wrap End User License Agreement, or Licensor acquired company license agreements) are being or have been used, they shall have the same meaning as Licensor Software.

"Managed Endpoints" means the number of Processors running instances of TIBCO ActiveMatrix BusinessWorks™ or other third party service implementations (e.g. Java or .NET components) that are being managed by TIBCO ActiveMatrix® Policy Manager.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Licensee's use of the Licensor Software, excluding Output.

"Module" means Licensor Software that is licensed to add functionality or capabilities in conjunction with an underlying Licensor Software product and may only be used in conjunction with the relevant underlying Licensor Software product. So long as Licensee holds a valid license in the underlying Licensor Software product, Licensee may use a reasonable number of copies of the Module to support the same business as the underlying Licensor Software product, but subject to any applicable site, Project or other business limitations or restrictions applicable to the underlying Licensor Software product. Licensee's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Licensor Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Named User" means an identifiable individual, not necessarily named at the time of a license grant, designated by Licensee to access the Licensor Software, regardless of whether or not the individual is actively using the Licensor Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Licensee to access the Licensor Software or b) once he or she has accessed the Licensor Software. In the case of TIBCO Formvine®, identifiable individuals will be counted as Named Users in accordance with the TIBCO Formvine® Licensor Software product Documentation. In the case of TIBCO® Nimbus Control, Named Users account types are further defined in the TIBCO® Nimbus Control Licensor Software product Documentation in the section entitled "Summary of User Rights".

"Non-Production" means a non-operational environment into which the Licensor Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

"Number of Units" means the cumulative number of copies of Licensor Software licensed for use by type of Unit, as set forth in this Agreement, an Order Form or in a purchase order, and including, if applicable, the current number of copies as reported by Licensee upon expiration of a Project or Enterprise Term.

"Orders" mean the total number of unique transactions submitted, stored in and counted by the applicable Licensor Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Order Form" means any written order for Licensor Software or services, including, without limitation, a purchase order, Work Order, Statement of Work, Order Form or other form of ordering document delivered to Licensor, which is subject to, and incorporates by reference, the terms and conditions of this Agreement, and to which no other terms shall apply.

"Output" means Confidential Information of Licensee that has been input in the Materials for Licensee's use of the Licensor Software. "Physical Processor" means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.

"Platform" means for each discrete Licensor Software product, the operating system, hardware and/or environments (whether virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Licensor Software product name.

"Postal Directory" means a copy of the applicable product installed on a single Server.

"Processor" means a licensing Unit type for the Licensor Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy.

"Processor Bundle" means the Number of Units as determined by the number of Processors on which the Licensor Software licensed as a Bundle is licensed to run.

"Processor Source Locked" means the number of Processors the Licensor Software is installed on multiplied by the number of instances of a source system or database regardless of how many Processors are used by the source system or databases.

"Product Lines" means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family's then current list price. Licensor does not permit aggregation of products, services, purchase or license models and cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

"Production" means an operational environment into which the licensed Licensor Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

"Project" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Project in the Order Form, to be deployed by Licensee until the Project Term Expiration Date set forth in the Order Form, (the "Project Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Project Term, Licensee's right to deploy an unlimited Number of Units does not extend beyond the scope of the Project set forth in the Order Form, or to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Project Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on a Project basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Purchase" means when used in connection with "Equipment", the purchase of the hardware appliance, where Licensor transfers title of the hardware appliance to Licensee. The Licensor Software is licensed under the terms of this Agreement and not sold. Licensor (or a third party) owns the Licensor Software.

"Read-only User" means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Licensor Software at any given time, designated by Licensee to access the Licensor Software for the sole purpose of searching for and viewing data.

"Record" means a unique data item stored in and counted by the applicable Licensor Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Server" means a single computer performing common services for multiple other machines.

"Server Instance" means a computer with one (1) CPU, unless otherwise agreed in writing, performing common services for multiple other machines.

"Site Copy" means the number of copies of the Licensor Software licensed for use at the physical location of the Licensee entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

"Spare" means a unit of Equipment identified by use of the word "Spare" in its product name, which is kept in storage at the same location as Equipment in productive use. In the event Equipment in productive use becomes inoperable, Licensee may set up and configure a Spare for productive use, until the original Equipment becomes operational again, but in no event for a period greater than three (3) months, without first obtaining Licensor's written consent.

"Third Party Software" means third-party software identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation and in lieu of Licensee purchasing a license to Third Party Software directly from the third party vendor.

"TIBCO Processing Unit" or "TPU" means a Unit for measuring computing power as designated in the applicable TPU Conversion Table located and incorporated by reference at <http://www.tibco.com/software/cloud-instance-type-tpu-conversion-table.jsp> and as are set forth in an Order Form.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"Trading Partner" means an entity or individual with whom the Licensee engages in accordance with this Agreement in electronic commerce by means of Licensor Software and, in the case of TIBCO® KPSA, TIBCO® KxDR and TIBCO Kabira® Licensor Software products, an individual with whom Licensee engages to provide services, which may include, electronic commerce and or general service activation and provisioning of wireline and wireless packages for the exchange of data and content.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Licensor Software may be deployed (including, without limitation, Processor, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"User" means an employee of Licensee who is authorized by Licensee to use the Licensor Software in accordance with this Agreement. The number of Licensee computers on which the Licensor Software is installed shall not exceed (but may be less than) the number of licensed Users.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors. Special Provisions Regarding Processor Licensing:

Certain Licensor Software is licensed by the Unit type "Processor." The following describes how to calculate the number of Processor Units which should be licensed in a Virtualized Environment and in all other environments.

Calculation

The number of Processor Units of Licensor Software required to be licensed shall be calculated as follows:

1. In a Virtualized Environment, the number of Virtual Processors shall be calculated by following the steps below:

1. For each Virtual Machine running the Licensor Software, the number of Virtual Processors shall be counted in increments of whole numbers. For clarification, the lowest unit of measurement for Virtual Processors is one; any fraction shall be rounded upward to the next whole number.

2. If the number of Virtual Processors of a Virtual Machine can increase or decrease, then for the purpose of counting Virtual Processors, the number of Virtual Processors shall be the maximum whole number of Virtual Processors that could ever be assigned to the Virtual Machine running the Licensor Software.

3. Add the total number of Virtual Processors across all Virtual Machines within the entire Virtualized Environment that runs the Licensor Software.

2. In all other environments (e.g. running on physical machine(s) or if a Virtual Processor can run on more than one Physical Processor at a time), the number of Physical Processors shall be calculated by following the steps below:

1. For each Licensor Software, the relevant partition boundary shall be set:

(a) where the allocation is defined by Fixed Partitioning, to include all Physical Processors that could ever execute the Licensor Software. (b) where the allocation is not defined by Fixed Partitioning, to include all Physical Processors on the physical machine.

2. Count the total number of Physical Processors for the relevant partition boundary for each physical machine, and aggregate the counts across all physical machines within the entire environment that runs the Licensor Software.

3. For all environments, if multi-threading is enabled for the underlying physical cores, then the total count of Physical Processors or Virtual Processors, as the case may be, shall be multiplied by 0.5.

1. If the multi-threading function is disabled, then a multi-threaded core shall be treated as a single-threaded core, in which case, (a) when calculating the number of Processors in a Virtualized Environment, the 0.5 multiplier shall be inapplicable; and (b) when calculating the number of Processors in all other environments, the number of cores instead of threads shall be the number of Processors Units required to be licensed and the 0.5 multiplier shall be inapplicable.

4. Any fraction shall be rounded upward to the next whole number.

The above calculation yields the total number of Processor Units required to be licensed for the Licensor Software.

Appendix B – License Parameters

Effective April 1, 2012 – To the extent that TIBCO products contain Java SE, use of the Java SE Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at <http://www.oracle.com/technetwork/java/javase/documentation/index.html>.

Effective January 20, 2012 – TIBCO Formvine®

The module of the Licensor Software called TIBCO Formvine® Project Tools allows Licensor to create and manage TIBCO Formvine® projects, and to view, edit and export the data gathered through a Formvine® project's online form. Only the number of Named Users listed in an accepted Order Form which includes the Licensor Product named TIBCO Formvine® Project Tools shall be entitled to use the "Project Tools" as defined in the Documentation.

The module of the Licensor Software called TIBCO Formvine® Integration Add-on allows software other than TIBCO Formvine® Project Tools to exchange information with the TIBCO Formvine® Server by way of the server's application programming interfaces ("Formvine® APIs"). Only to the extent that an accepted Order Form includes the Licensor Product named TIBCO Formvine® Integration Add-on, shall Licensee have rights to use software other than the licensed TIBCO Formvine® Project Tools in conjunction with the Formvine® APIs.

Effective December 1, 2011 – The following definition of Processor is being retired and will only apply to contracts entered into on or before November 30, 2011:

"Processor" means a central processing unit ("CPU") on which the Licensor Software is licensed to run. For purposes of counting Processors on multicore chips, the number of Processors is the number of CPUs times the number of cores multiplied by .75.

Effective July 1, 2010 - TIBCO Foresight™ HIPAA Validator® Desktop; TIBCO Foresight™ Community Manager®; TIBCO Foresight™ Instream®; TIBCO Foresight™ Transaction Insight®; TIBCO BusinessConnect™ EDI Protocol HIPAA Edition powered by Instream® ("Editorial Content Products")

The Editorial Content Products contain CPT Editorial Content, which is licensed from the American Medical Association ("AMA"). The AMA holds the copyright to CPT Editorial Content and the registered trademark "CPT". Provision of updated CPT Editorial Content in the Editorial Content Products is dependent on continuing contractual relationship between Licensor and the AMA. The following terms apply to end users of the Editorial Content Products:

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Effective July 1, 2010 – The following Licensor Software products are each licensed for the sole purpose set forth below:

TIBCO® KPSA – Mobile for provisioning and activating telecommunication services and mobile access networks (such as GSM, EDGE, UMTS, GPRS, and HSPDA) each for Licensee's mobile telecommunication subscribers. TIBCO® KPSA – Broadband – for provisioning and activating telecommunication services and broadband access networks (such as DSL, optical fiber, and WiMAX) each for Licensee's broadband subscribers. TIBCO® KPSA Load Balancer – Mobile – for distributing traffic across TIBCO KPSA – Mobile nodes. TIBCO® KPSA Load Balancer – Broadband – for distributing traffic across TIBCO KPSA – Broadband nodes. TIBCO® KxDR – Mobile – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by mobile network elements and service platforms serving Licensor's mobile subscribers. TIBCO® KxDR – Broadband – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by broadband network elements and service platforms serving Licensor's broadband subscribers. TIBCO® KPSA – Order Management – for managing the end-to-end lifecycle of Licensee's customer requests for the delivery of telecommunication products as captured from order entry systems (excluding the provisioning and activation of telecommunication services and mobile or broadband access networks).

Effective May 27, 2010 - Licensor Software products TIBCO BusinessEvents™, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, TIBCO LogLogic® Enterprise Virtual Appliance,

TIBCO LogLogic® Compliance Manager, TIBCO LogLogic® Security Event Manager Appliances, TIBCO LogLogic® Log Management Enterprise Appliances (including but not limited to TIBCO LogLogic LX Appliances and TIBCO LogLogic® ST Appliances) and TIBCO LogLogic® Log Management Mid-Market Appliances (TIBCO LogLogic® MX Appliances), (and each of the foregoing when included in a Bundle or as Embedded/Bundled products) are subject to a restricted license and contain third party proprietary code that Licensee or Partner can only use in conjunction with the Licensor Software.

Effective May 1, 2010 – TIBCO DataSynapse™ Analytics is an Embedded/Bundled product, which includes, in part, TIBCO Spotfire® Web Player and TIBCO Spotfire® Professional as bundled Licensor Software. In addition to Embedded/Bundled Products restrictions, Licensee's use of these bundled products in connection with TIBCO Spotfire® Analytics is limited to 25 Named Users of TIBCO Spotfire Web Player, 5 Named Users of TIBCO Spotfire Professional.

Effective February 18, 2010 – All TIBCO iProcess Spotfire® Add-on Web User is licensed solely to increase the number of TIBCO Spotfire® Web Player Named Users included in and for use in connection with the TIBCO iProcess Spotfire® Add-on Bundle. TIBCO iProcess Spotfire Add-on Web User may be used solely in connection with the TIBCO iProcess Spotfire Add-on Bundle.

Effective May 12, 2009 – All TIBCO Spotfire® Application Data Services products shall be used exclusively with TIBCO Spotfire® Analytics Server or TIBCO Spotfire® Server and shall only be accessed via ODBC or JDBC.

Effective June 1, 2007 – TIBCO iProcess™ Decisions Studio and TIBCO iProcess™ Decisions must be used with TIBCO iProcess™.

Effective April 1, 2001 – "Embedded/Bundled Products" – Some Licensor Software embeds or bundles other Licensor Software. Use of such embedded or bundled Licensor Software is solely to enable the functionality of the Licensor Software licensed under this Agreement, and may not be used or accessed by any other Licensor Software, or for any other purpose.

Effective December 24, 2000 – TIBCO BusinessPartner / Effective October 17, 2006 – TIBCO BusinessConnect Remote - Licensee may sublicense to third parties ("Partners") up to the total Number of Units of TIBCO BusinessPartner or TIBCO BusinessConnect Remote, provided that for every such sublicense, the Number of Units Licensee is licensed to use shall be reduced by the same number, and provided further that prior to delivery of TIBCO BusinessPartner or TIBCO BusinessConnect Remote to a Partner, such Partner agrees in writing (a) to be bound by terms and conditions at least as protective of Licensor as the terms of this Agreement, (b) that TIBCO BusinessPartner or TIBCO BusinessConnect Remote be used solely to communicate with Licensee's implementation of TIBCO BusinessConnect, and (c) for such Partner to direct all technical support and Maintenance questions directly to Licensee. Licensee agrees to keep records of the Partners to which it distributes TIBCO BusinessPartner or TIBCO BusinessConnect Remote, and to provide Licensor the names thereof (with an address and contact name) within sixty (60) days of the end of each calendar quarter.

TSFI EULA Appendix C – Maintenance Program Guide

1 Overview

TIBCO is dedicated to the success of our customers by providing timely responses to problems with TIBCO software products. TIBCO's highly skilled support engineers are well versed in TIBCO's software products. TIBCO's support services group is a global organization that uses a "follow-the-sun" model to ensure that support is available whenever it is needed. Support centers are located around the world to support all the TIBCO product lines.

In the event you have contracted for Maintenance Services at the Bronze Level, the supported time zone assigned for Service Hours will be based on the TIBCO software delivery address for your company.

All Equipment Maintenance is subject to the terms of the Equipment Maintenance Program (Appendix D).

2 Maintenance Service Levels

2.1 TIBCO Maintenance Service Levels

MAINTENANCE LEVEL	Updates Only	Bronze (includes Updates)	Silver (includes Updates)
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Service Hours:	N/A	9am-5pm, Monday-Friday Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	N/A	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 Hours
Target Resolution:	N/A	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
TIBCO DirectConnectSM Manager (DCM) Support	N/A	N/A	N/A
Authorized Contacts:	N/A	Unlimited	Unlimited

2.2 Spotfire, DataSynapse, and Foresight Maintenance Service Levels

MAINTENANCE LEVEL	Bronze term (includes Updates)	Silver (includes Updates)
Service Hours:	9am-5pm, Monday-Friday Service Hours are based on CET, UTT/GMT, GMT+5:30, GMT+8:00, GMT+9:00, and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 hours
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Number of Contacts:	Unlimited	Unlimited

3 Maintenance

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, "Licensor Software," shall include "TIBCO Software," "Spotfire Software" or "Software" as defined in any such agreement. "Customer," as used below, shall have the same meaning as defined for the customer company entity licensed to use the Licensor Software in any such agreement.

3.1 Severity Level Definitions

"Severity 1" is an emergency production situation where the Licensor Software is totally inoperable or fails catastrophically and there is no workaround;

"Severity 2" is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Licensor Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

"Severity 3" is where the Licensor Software is usable, but does not provide a function in the most convenient manner; and

"Severity 4" is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from TIBCO.

3.2 Scope

TIBCO will use commercially reasonable efforts to resolve matters according to the problem Severity ("Maintenance") level determined by TIBCO. All communications will be in English. Customer will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access

to a Customer authorized contact. During the Maintenance term, Customer authorized contacts as applicable for the Maintenance level selected in Customer's order, and which are registered at TIBCO's support website: <https://support.tibco.com/esupport/>, may notify TIBCO's Technical Assistance Center of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by TIBCO, or TIBCO's their respective authorized resellers or distributors (if applicable); Updates are subject to Customer's license agreement limitations and restrictions. "Updates" means Licensor Software bug fixes, enhancements, and upgrades, if and when made generally available by TIBCO under Maintenance to Customers for a specific Licensor Software product. Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer's right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO's sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. TIBCO will notify Customer in writing in the event that Maintenance is materially affected by TIBCO licensor(s). TIBCO will provide Maintenance for a release version of the Licensor Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Licensor Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

3.3 Limits

Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from TIBCO or any other third party. Unless otherwise stated in an Order Form, each license grant is incremental to all prior license grants and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which TIBCO is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Licensor Software products with non-matching service levels. TIBCO reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.

3.4 Perpetual Term Licenses

The initial Maintenance term shall be for one year commencing on the effective date of the applicable Customer order, unless otherwise stated in the relevant Order Form. In the event Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance will be renewed for successive one (1) year terms and the annual Maintenance fee for the first renewal term shall not increase by more than the percentage rate change in the Consumer Price Index for the 12 month period immediately preceding the anniversary date of Maintenance. Maintenance fees for subsequently acquired Licensor Software will be prorated to expire with the then-current annual Maintenance term.

3.5 Limited Term Licenses

The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable Order Form. During the license term, and in the event the Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance may be renewed for successive one year terms, and the annual Maintenance fee for the first renewal term shall be equal to the annual Maintenance fee for the initial term.

3.6 Reinstatement of Maintenance

Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed.

3.7 Non-Continuous Coverage

In the event Customer elects not to maintain continuous Maintenance, TIBCO may, at its discretion, refuse to provide any Maintenance to Customer until payment for the period of discontinuity is made current.

3.8 Discontinued Support for Prior Release Version

When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, will attempt to provide Customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Licensor Software product.

When a Customer:

- encounters a known defect, which is already corrected in the most current or a supported version of the Licensor Software, the Customer will need to upgrade to the most current or supported version of the Licensor Software to obtain the fix; or
- discovers an unknown defect, engineering will make the fix in the most current version of the Licensor Software and the Customer will need to upgrade to that version to obtain the fix.

Additionally, with typically 12 months prior notice, TIBCO may announce the end of support (i.e. stop accepting SRs) on significantly older versions by publishing a Late Breaking News (LBN) article on the TIBCO Support Web site (<https://support.tibco.com/esupport/>). Even in such a case, access to the knowledge base of the older versions is always available to a Customer currently under Maintenance. A Customer may submit a service request via the TIBCO Support Web to request a product version be included under the TIBCO Extended Support Program.

3.9 Product End-of-Life

Notwithstanding 3.2 above, Customers are provided advance written notice (up to twelve months) when Licensor Software is to be retired. This information is published as "Retirement Notices" under the Late Breaking News (LBN) section of the TIBCO Support Web.

3.10 TIBCO Extended Support Program

TIBCO is pleased to offer customers extended Maintenance on certain Licensor software product versions. The scope and terms of extended Maintenance:

Include

- The ability to submit service requests for eligible product versions.
- TIBCO assistance providing workarounds and existing fixes for issues reported; staging of issues by TIBCO will be on the latest version of eligible product(s).
- Maintenance service level initial response and target resolution times are according to customers' existing Maintenance service level.

Exclude

- Enhancements, service packs, or defect corrections
- Support for new platforms (database versions, operating system versions, TIBCO infrastructure products, etc.)
- Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions
- Partners participating in the TIBCO Partner Network or any other TIBCO Partner program.

Extended Maintenance is subject to eligibility requirements. Please contact your TIBCO Sales Account Executive or the TIBCO Maintenance Renewal team at renewals@tibco.com for more information and to obtain the then current list of product versions currently supported under extended Maintenance.

TIBCO reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which TIBCO Extended Support Program Maintenance fees have already been paid.

3.11 Virtualized Environments Support

Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences in price, features, functionality and quantity, we will provide Maintenance for Licensor Software in any Virtualized Environment if the following criteria are met:

- The operating system running in the Virtualized Environment is supported by TIBCO for Licensor Software version in question, and
- The Virtualized Environment being used is officially certified and approved by the operating system vendor in question, and
- The Virtualized Environment presents a true image of the native operating system.

TIBCO does not make any claims for the performance of Licensor Software running in a Virtualized Environment nor can we make any recommendations for optimal configuration of the Virtualized Environment in question.

Should it become necessary to engage the Virtualized Environment vendor, it will be the responsibility of the Customer to open a service request with their vendor. TIBCO Support will provide reasonable assistance to the Customer or vendor as it relates to the use and understanding of Licensor Software in the case at hand.

4 TIBCO Support Web

It is recommended that the Customer establish and maintain an internal support organization to provide front line support services to their users and that all authorized contacts be trained on the TIBCO software products in classes provided by TIBCO Education, as reasonably required by TIBCO to enable the customer to support licensed TIBCO software products.

Step 1: Identify the assigned contacts within your company. Review your maintenance agreement to see how many contacts are authorized.

Step 2: Register assigned contacts and one management-level individual (for verification and escalation) by sending [an email to support@tibco.com](mailto:an_email_to_support@tibco.com). Be sure to include the name, email address, physical address and phone number of each contact.

All contacts will be registered with our call tracking system and given access to TIBCO Support Web.

Step 3: Have all assigned contacts view the Support Overview Presentation as well as review the "Support Policies" section within TIBCO Support Web.

Additional information about Getting Started can be found at <http://www.tibco.com/services/support/getting-started/default.jsp>.

4.1 Opening a Service Request

There are two ways to report a problem:

- TIBCO Support Web (preferred method). Cases reported online are automatically entered into TIBCO's Call Tracking system and assigned a Service Request (SR) number. TIBCO requires that all Severity 1 cases be followed up with a phone call to our Technical Assistance Center (TAC) to ensure immediate attention to your issue.
- Phone. Each TIBCO customer is assigned a regional Technical Assistance Center (TAC) that they can contact to request support via phone. The support line phone number for each regional TAC in the America's, EMEA and APAC is published on the TIBCO Support Web. A service request will be created in TIBCO's call tracking system and an SR number is provided.

4.2 Processing a Service Request

Once a service request is submitted, the TAC specialist will review, access and assign the appropriate severity level. All severity 3 and 4 calls will be assigned to the appropriate product and workgroup where our technical support engineers will start working on the call on a First in – First out (FIFO) basis. TAC will notify support managers of any SRs that are assigned to Severity 1 or 2, so that they are handled in an escalated manner. The TIBCO Support Engineer will communicate with the customer until the issue is resolved. Depending on the nature of a Service Request, a Service Request can be resolved by a Support Engineer or logged by a Support Engineer as bugs/enhancements with product engineering.

TIBCO support level and responsibilities:

- First level (Technical Assistance Center):

- Review Service Requests reported by Web, Email or phone from a customer authorized contact
- Validate customer maintenance status, product entitlement and check for any special handling required.
- Identify type of request, problem definition, configuration, products, product versions and platforms.
- Determine severity of the problem and execute any escalation procedures necessary.
- Direct problems for resolution to workgroups

- Second level (Product Support):

- Confirm problem and configuration used by the customer
- Evaluate against known problems or issues
- Stage the problem
- Reproduce problems and provide workarounds
- Escalate to engineering where required to develop patches and fixes
- Keep the SR updated at all times within the Call Tracking system
- Keep the customer Authorized Contact updated on the progress

- Third level (Engineering):

- Develop fixes as needed
- Test and verify functionality and performance
- Update the source code control system as needed
- Ensure patches and fixes are incorporated into a future product release

4.3 Escalations

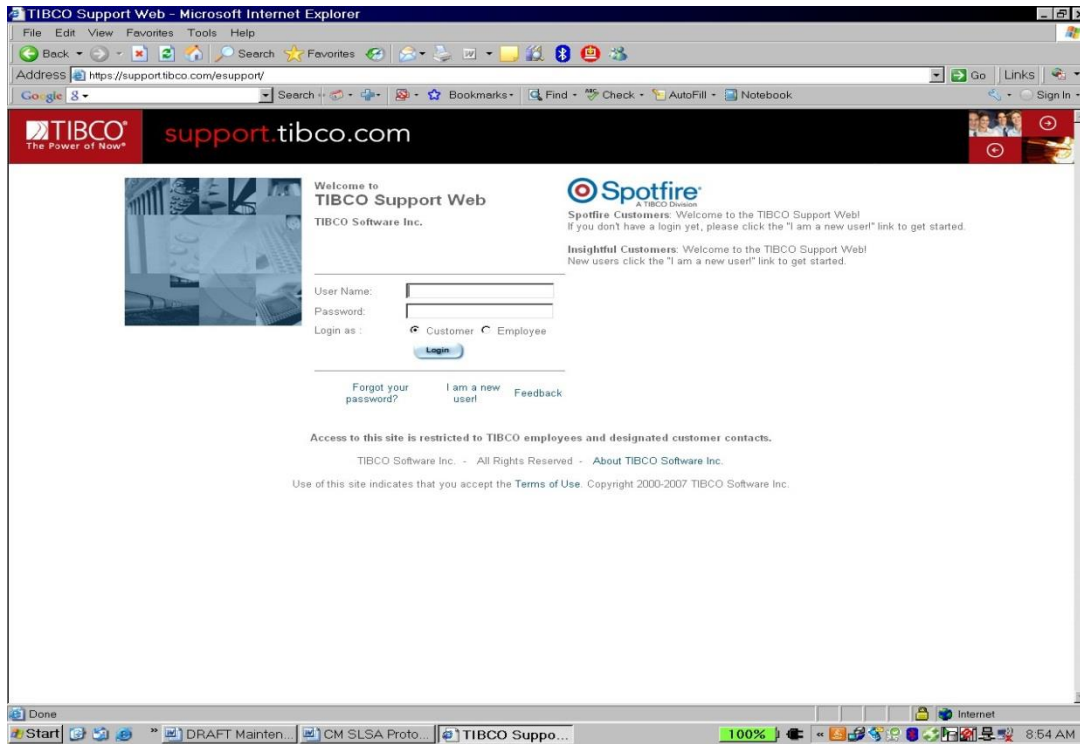
Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:

- No response to a problem reported, within the designated time given by the call response coordinator or technical engineer
- Response times out of severity guidelines
- Customer dissatisfaction with Service Request resolution you've been given

North and South America +1.650.846.5789
EMEA (Europe, Middle East, and Africa) +44(0).870.909.3889
Asia and Australia +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a TIBCO Support Manager. This phone number is to be used if or when a customer is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of TIBCO's management. If voicemail is reached, the customer should leave a message containing the company name, a contact telephone number, and estimated severity level for the issue. The voice mail will trigger an immediate page to a Support Manager, who will contact customer at the number left in the message.

4.4 TIBCO Support Web Login

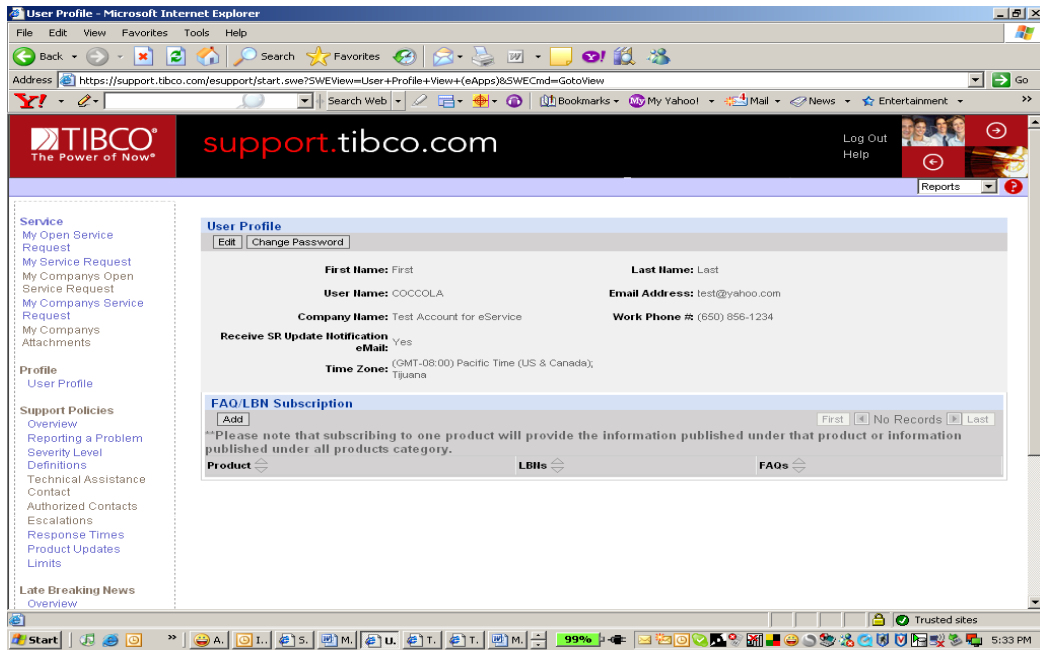


4.5 Creating, Updating and Tracking a Service Request

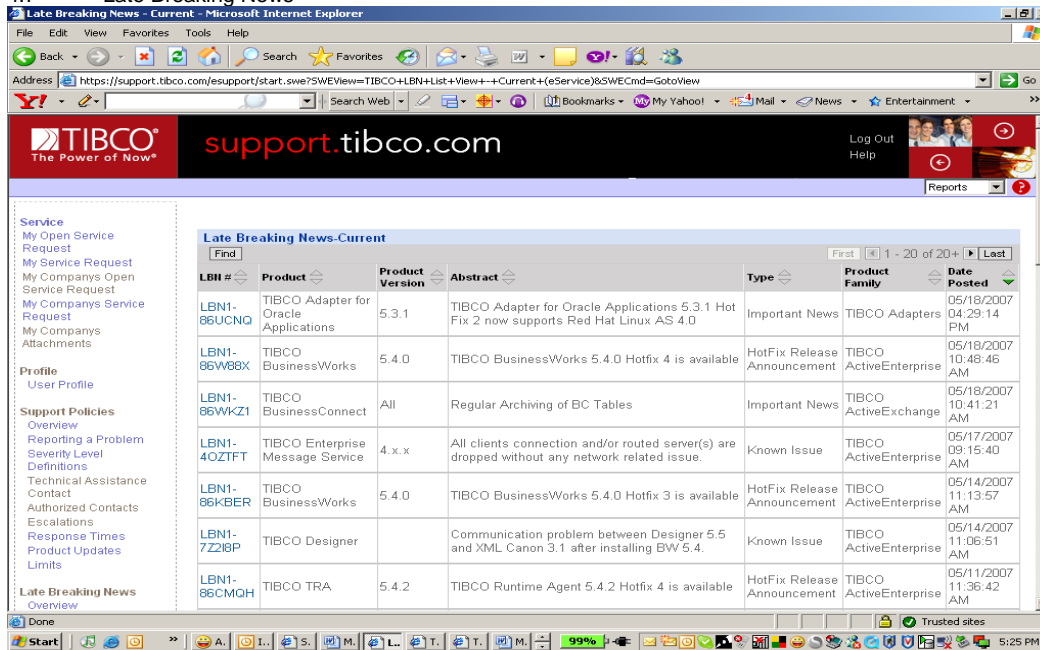


4.6 User Profile

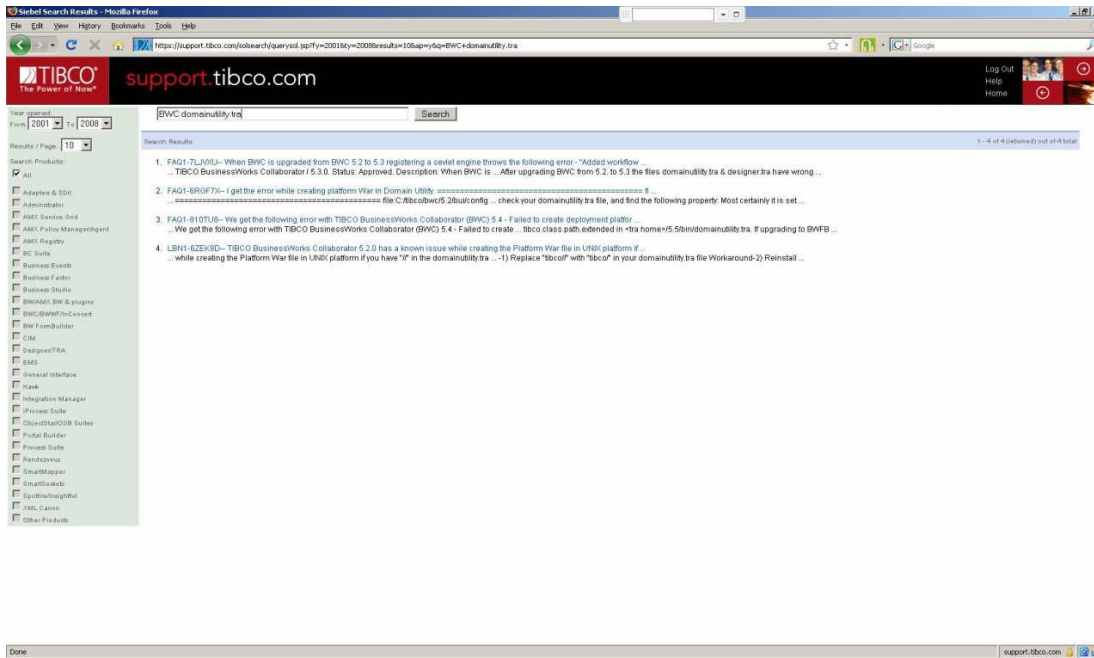
Authorized contacts are able to change their login password, update their phone numbers, select their time zone and subscribe to Product FAQ's and LBN in this section.



4.7 Late Breaking News

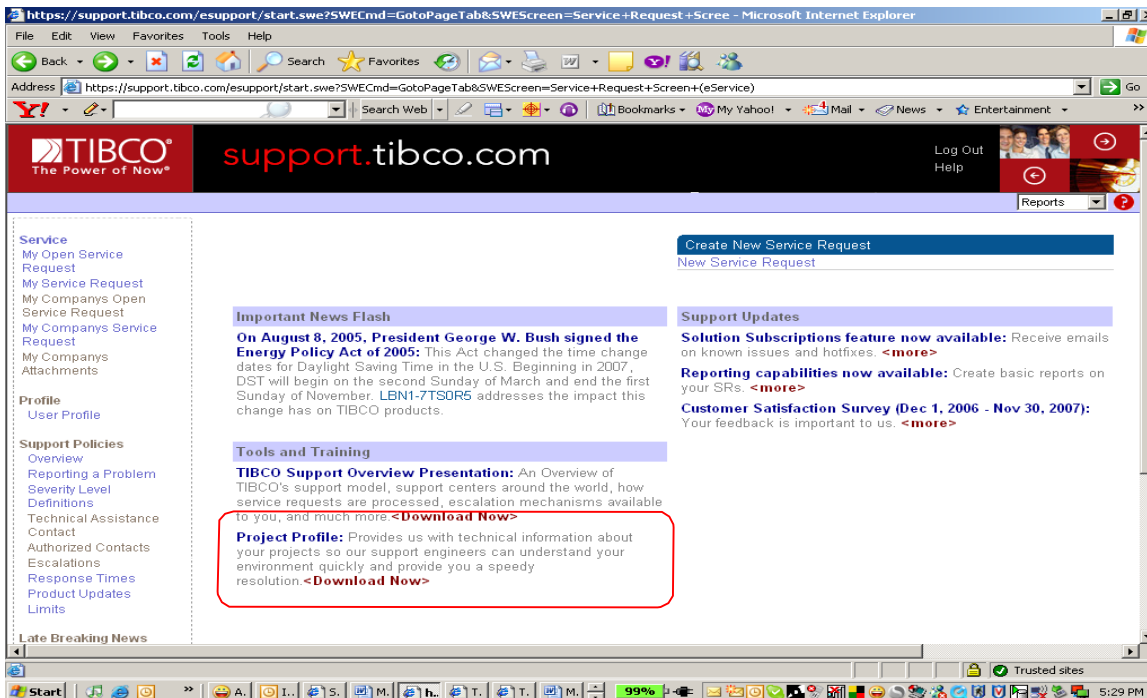


4.8 Product FAQs



4.9 Customer Project Profile

Each customer is encouraged to submit and maintain a detailed project profile that gives details about their TIBCO software implementation.



4.10 Additional Features

- Solution Subscription feature: By updating your User Profile, you now have the ability to receive notifications on any FAQ and/or LBN material we publish. This means that you can get the latest information about a known issue or the availability of hot fixes as soon as it is announced on any product of your choice. Please note that when you subscribe to a product, you will receive information published for that product as well as information published under the 'All Products' category.

- Reporting Capabilities: Generate basic reports on your service requests and download them in .csv or Excel format. This feature and its help function can be found in the upper right hand corner of the Support Web.
- Customer Satisfaction Survey: It is our goal to continuously improve the services we provide and a key part of this process is to hear how we are doing from our customers. The valuable input we receive will help us spotlight areas where we need to focus more attention. Customer Satisfaction Surveys are being conducted using the telephone by our global TAC team. They will contact customers who have recently completed a service request and will collect feedback on satisfaction measured on a 5-point scale (5-very satisfied; 1- Very Dissatisfied). Results will be shared with our support team as well as be made available on the Support Web for our customers to view.
- Authorized contacts can access the TIBCO Support Overview presentation, which provides useful information about TIBCO's support model, support centers around the world, how service requests are processed, escalation mechanisms available, and much more.

5 TIBCO Spotfire Customer Support

Spotfire and S-Plus customers can submit technical support requests via the TIBCO Support Web portal. The Support Web site allows customers to create, track, and update your product Service Requests (SRs), Enhancement Requests, Knowledge base, Late Breaking News items and more. Customers with accounts on the TIBCO Support Web may login and submit Service Requests today.

6 TIBCO Foresight Customer Support

TIBCO Foresight customers can submit technical support requests via email to fssupport@tibco.com. Customers may also contact our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

7 Product Download Site

The electronic software delivery service found at <http://download.tibco.com/tibco/> provides confirmed internet delivery and tracking of software and documentation packages to authorized customers. Use of this system requires a secure username and password. This service provides authorized users with a customized portal to access their TIBCO product entitlements. Customers can view products they have purchased (excluding products purchased from a TIBCO web store site), as well as products they have obtained for evaluation purposes (excluding products downloaded or obtained for evaluation from another TIBCO web site). Customers with a current maintenance contract will automatically be entitled to download new releases, product updates and service pack releases, during their active maintenance period. Additional information is available on the TIBCO Support Web at "Product Updates" under the "Support Policies" section. Any software downloaded from this site may only be used in accordance with the terms and conditions of your license agreement with TIBCO Software Inc.

8 tibbr® Support

tibbr® Support Customers are entitled to Maintenance Service for tibbr® at the Silver Maintenance Level unless otherwise stated in an Ordering Document, as well as access to the tibbr® Support Program, as described below, irrespective of the service level of Maintenance for any other Licensor Software products which Customer might have licensed and provided that all tibbr® Product Line Licensor Software products licensed by Customer are subject to tibbr® Support.

8.1 tibbr® Support Program

This Program is intended to support Customers through the adoption of tibbr® within their organization. As part of this Program, Customers will be supported in their ongoing usage of tibbr® with responses to questions regarding technical issues, usage best practices and how to best implement the product.

The tibbr® Support Program is provided by TIBCO upon Customer's request, subject to availability of resources and on a reasonable effort basis. TIBCO will make reasonable endeavours to meet Customer's requests for assistance but provides no assurance that this service will be delivered on specific dates. TIBCO reserves the right to modify, reduce or increase the tasks included in the Program. Service Requests can be opened either through the TIBCO Support Web or by phone.

TSFI EULA Appendix D – Equipment Maintenance Program Guide

1. Overview

This Equipment Maintenance Program Guide ("Equipment MPG") sets forth the terms and conditions by which TIBCO shall provide, and its customers shall receive, Maintenance for Equipment.

Maintenance services are optional and are available at the Bronze and Silver levels. Software Maintenance is determined by the level of Equipment Maintenance purchased, i.e. Maintenance levels for Equipment Software must be equal to the Maintenance levels for the corresponding Equipment, e.g.

Silver level Equipment Maintenance will include Silver level Software Maintenance for the Equipment Software.

Maintenance for Equipment Software is subject to the Maintenance Program Guide located at Appendix C ("MPG"). In the event of a conflict between the MPG and this Equipment MPG, where such conflict pertains to Equipment, this Equipment MPG shall prevail.

Solely as used in this Equipment MPG, “Agreement” means this Equipment MPG, the MPG and any agreement currently in effect between Customer and TIBCO related to the Equipment.

2. Equipment Maintenance Service Levels

MAINTENANCE LEVEL	Bronze (includes Updates)	Silver (includes Updates)
Service Hours:	9 a.m. -5 p.m., Monday-Friday (“Business Hours”) Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours Severity 3: Next Major Release	Severity 1 & 2: 4 Hours Severity 3: Next Major Release
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Authorized Contacts:	Unlimited	Unlimited

3. Equipment Maintenance Terms and Conditions

3.1. Equipment Maintenance - Scope. This Section 3 applies to Maintenance of Equipment, specifically excluding Maintenance for the TIBCO Messaging Appliance™ (“TMA”), and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below. TMA Maintenance terms are set forth in Section 4 below.

3.2. Equipment/Component Repair or Replacement Protection. During the Maintenance term, for all Equipment Maintenance levels, and subject to Customer’s compliance with the Agreement, TIBCO shall, at its sole option, either repair or replace the covered Equipment or component thereof that TIBCO can confirm is causing an error.

3.3. Contacting Support; Troubleshooting. Upon discovering an error, Customer must promptly first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling Equipment replacement or repair, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in Section 6 below.

3.4. On-site Equipment Repair Process.

3.4.1. On-site repair support is available solely for TIBCO LogLogic® Security Event Manager (“SEM”) and TIBCO LogLogic® Security Event Viewer (“SEV”) Customers in the United States and Europe.

3.4.2. If TIBCO determines that the Equipment or component thereof may be repaired at Customer’s location, TIBCO will endeavor to dispatch a TIBCO (or TIBCO-contracted) technician to the Customer’s location by the next business day; provided, however, that Customer must immediately notify TIBCO in writing in advance if the Equipment is located in an area with restricted access which may require a technician with special qualifications. In such instance, TIBCO will use commercially reasonable efforts to locate and contract, if necessary and at Customer’s expense, a technician with such special qualifications; provided that Customer understands and agrees that any reasonable delay or failure in procuring such technician shall not constitute a breach of the Agreement.

3.5. Equipment Replacement – Processes and Procedures. Except as otherwise provided in Section 3.4 above, TIBCO will take all commercially reasonable steps to replace the Equipment or component thereof, as applicable; provided that Customers follow the return material authorization (“RMA”) procedure described in this Section 3.5. In the event that TIBCO recommends replacement of a component, TIBCO will provide Customer with instructions for the removal of the component and the installation of the replacement component.

3.5.1. Customer must obtain an RMA from TIBCO prior to returning any Equipment to TIBCO.

Customer may request an RMA by telephone (1-800-957-LOGS) or by email at support@loglogic.com. Customer must provide the following information related to every Equipment or component thereof to be returned:

- Model number, and serial number, eth0 MAC address or Tag ID of the Equipment, and, if returning an Equipment component, a description of such component;
- Sender’s name, telephone, email address and fax number;
- Reason for return, i.e. a description of the error; and
- Ship-to address, including contact name, email address and phone number of the individual to receive the TIBCO replacement Equipment.

3.5.2. If the RMA is received, authorized and processed by TIBCO before 2 PM Pacific Standard Time (USA) or 2PM UK (GMT) Time, TIBCO will ship replacement Equipment: (1) on the same business day where the Equipment or component to be replaced does not require customization; and (2) within forty-eight (48) business hours where the replacement Equipment requires customization. Non-customized shipped replacement Equipment or components will be factory-default/off-the-shelf. Any shipped repaired or replaced Equipment or components may be refurbished or include refurbished components.

3.5.3. TIBCO will ship replacement Equipment for next local business day standard delivery to Customer’s location free of freight charges. Unless otherwise specified or agreed upon, factory default/off-the-shelf Equipment will be shipped with the latest Software.

3.5.4. TIBCO will provide Customer with a shipping account number or prepaid shipping label to use for purposes of returning defective Equipment or components. While Customer is not obligated to return defective Equipment or components before TIBCO will ship replacements, Customer is nonetheless required to ensure that the returned Equipment is received by, or is in transit to, TIBCO or its designee within ten (10) business days of Customer’s receipt of the replacement Equipment.

3.5.5. TIBCO strongly recommends that Customer keep all original packing material received with the Equipment for use in any Equipment return. If Customer no longer has the original packaging, Customer may request that TIBCO send them replacement packaging at Customer’s cost. Customer shall also be wholly responsible for any damage or loss of the Equipment in transit; TIBCO recommends that Customer procure sufficient insurance before shipping Equipment to TIBCO.

3.5.6. Customer acknowledges that Customer-returned Equipment shall become the property of TIBCO upon delivery to TIBCO.

3.6. Keep Your Hard Drive Option: For an annual additional fee, Customers may purchase an option to “Keep Your Hard Drive,” entitling Customer to retain the defective hard drive(s). Subject to compliance with instructions provided by TIBCO, Customer may extract and retain or destroy the original hard drives from the Equipment. In no instance may Customer transfer, connect or otherwise use any drive(s) from returned Equipment in the replacement Equipment; doing so will result in Customer’s breach of the Agreement, and will void TIBCO’s warranty obligations.

3.7. Extended Support: Extended support for Equipment is available, subject to Section 3.10 of the MPG (TIBCO Extended Support Program).

4. TMA Maintenance Terms and Conditions

4.1. TMA Maintenance – Scope. This Section 4 applies solely to the TMA, and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below.

4.2. TMA Replacement Protection. During the Maintenance term, and subject to Customer’s compliance with the terms and conditions of the Agreement, under Silver Equipment level Maintenance, TIBCO will provide a permanent replacement of the TMA. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available.

4.3. Contacting Support; Troubleshooting. When experiencing a problem, Customer must first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the TMA. Prior to scheduling advance replacement of the TMA, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in this Section 4 and in Section 6 below. Customer will be required to provide a credit card number or purchase order number.

4.4. TMA Replacement – Processes and Procedures. If the problem cannot be resolved remotely, TIBCO will replace the failed TMA provided that Customers follow the procedure described below.

4.4.1. Prior to returning the failed TMA, Customer must:

- a) perform all steps for self-test and trouble-shooting specified in the operating manual for the TMA;

b) provide to TIBCO, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable).

4.4.2. Promptly following completion of Customer's obligations under Section 4.4.1, TIBCO or its authorized third party will ship the replacement TMA to Customer's location free of freight charges. The replacement TMA will be shipped in a suitable container and include instructions for returning the failed TMA. Packaging instructions and a prepaid shipping label for the return of the failed TMA will be included in replacement TMA shipping container. At TIBCO's discretion, TIBCO or TIBCO's authorized third party provider may elect to collect failed TMA at your location.

4.4.3. The replacement TMA will be a new or a refurbished TMA.

4.4.4. To return the failed TMA, Customer must:

a) unless Customer will deliver the failed TMA to TIBCO in person, package the failed TMA carefully in the original shipping container, or a shipping container that prevents the TMA from being damaged while in transit to TIBCO or TIBCO's authorized third party provider.

b) ship the failed TMA to TIBCO or TIBCO's third party provider (as directed by TIBCO) within three (3) business days of receipt of the replacement TMA and obtain a prepaid insurance receipt to be retained by Customer as proof of shipment to TIBCO.

4.4.5. If TIBCO or TIBCO's third party provider does not receive the failed TMA within fifteen (15) days of Customer's receipt of the replacement TMA, TIBCO reserves the right to institute any available legal action related to the failure to return the TMA.

4.4.6. The returned TMA shall become the property of TIBCO or TIBCO's third party provider upon receipt.

4.5. Support Limitations:

4.5.1. At TIBCO's sole discretion, Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Customer replaceable by TIBCO. TIBCO will determine the appropriate delivery method required.

4.6. The following services are specifically excluded from TMA Maintenance:

- Diagnosis or Maintenance at the Customer site.
- Set-up and installation of the replacement TMA or replacement parts at the Customer site.

5. Maintenance Exclusions

5.1. Third Parties. Customer acknowledges and agrees that TIBCO may subcontract Maintenance services for the Equipment, in TIBCO's sole discretion, to a third-party authorized provider; TIBCO will remain responsible for ensuring that the Equipment Maintenance obligations under this Agreement are fulfilled.

5.2. Equipment Maintenance specifically excludes:

- Recovery of the operating system, other software, parameters and data.
- Troubleshooting for interconnectivity or compatibility problems.
- Services required due to failure of Customer to incorporate any system or software fix, repair, patch, or modification provided to the Customer by TIBCO.
- Services required due to failure of the Customer to take avoidance action previously advised by TIBCO.
- User preventative maintenance.
- Damage caused by failure of Customer to follow manufacturer's recommended maintenance or operating specifications, or caused by Customer's misuse, negligence or abuse.
- Damage caused by environmental causes at Customer's location, such as poor ventilation, improper storage, power failures or surges.
- Damage due events outside of TIBCO's control, including fire, flood, act of god, war or nuclear incident or terrorism.
- Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality.
- Fraud or theft.
- Alteration or modification of the Equipment in any way, not specifically directed in writing by TIBCO; repairs or alterations made by an unauthorized technician or user; damages caused by combination of Software with third party hardware or software.
- Transit or relocation of Equipment by Customer, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.

6. Customer Responsibilities

Customer will be required, upon TIBCO's request, to support resolving any problem reported under Maintenance remotely by:

- Providing all information necessary for TIBCO to deliver timely and professional remote support and/or to enable TIBCO to determine the level of support eligibility.
- Starting self tests and/or other diagnostic tools and programs.
- Performing other reasonable activities to help TIBCO identify or resolve the problem.
- Customer must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.
- Customer is responsible for installing all replacement Equipment (or components thereof) in a timely manner.
- Customer is solely responsible for backing up all copies of its Licensed Software and data.
- Customer shall restore software and data on the Equipment after the repair or replacement.
- Customer is responsible for the installation of any software not provided by TIBCO with the Equipment and insure all software installed on the Equipment is appropriately licensed and compatible with the Equipment.
- Where Customer is not a Government End User, Customer acknowledges that in the event that diagnosis by TIBCO reveals that the error is not caused by the Equipment that TIBCO may charge Customer the then-current GSA Schedule rate for such diagnosis.
- In the event of that the Equipment or TMA is retired, Customer may need to upgrade its Equipment or TMA in order to ensure performance of the applicable Software.

7. Equipment End of Life and End of Sale:

As part of the normal product lifecycle, TIBCO will announce the date of which an Equipment will become End of Life ("EOL") which such announcement will also include a date for the End of Sale ("EOS") of such Equipment. For clarity, this Section 7 applies to EOL of Equipment only, specifically excluding TMA. An EOL means that TIBCO will no longer provide Maintenance for such Equipment. EOS means that such Equipment will not be available for purchase.

TIBCO shall EOL an Equipment three (3) years following the EOS date, at which point all Maintenance services for such Equipment shall terminate.

TIBCO Software Inc.
Terms of Use for United States Federal Government Users

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2. RESERVED.

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- b. you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- c. victimizes, harasses, degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- d. infringes on any patent, trademark, trade secret, copyright, right of publicity or other proprietary right of any party;
- e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation or any form of lottery, gambling, survey or illegal or unauthorized schemes;
- f. contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- g. interferes with or disrupts our services or servers or networks connected to the Site;
- h. intentionally or unintentionally violates any applicable local, state, national or international law, including, but not limited to, United States export laws and the export and import laws of other countries, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- i. collects or stores personal data about other users; or
- j. impersonates any person or entity, including any employee or representative of TIBCO or otherwise misrepresents your affiliation with a person or entity.

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17. Special Admonitions for International Use

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18. Applicable Law

The Site is controlled by TIBCO from its offices within the State of California, United States of America. For United States Government customers, the laws applicable to the interpretation of these Terms shall be applicable United States Federal law.

19. Disputes

Disputes between United States Government customers and TIBCO related to these terms shall be brought in a United States Federal court or adjudicative body of competent jurisdiction.

20. Privacy Statement

We consider the privacy of our users to be paramount, and we have developed a privacy policy to protect and inform our users. Our current Privacy Statement available at <http://www.tibco.com/privacy.jsp> is incorporated herein by reference and made part of these Terms.

21. Disclosure

You acknowledge, consent and agree that TIBCO may access, preserve, and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of TIBCO, its customers and the public.

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ATTN: TIBCO Software Federal, Inc.
c/o Office of General Counsel
3303 Hillview Avenue
Palo Alto, CA 94304

Please feel free to contact TIBCO to resolve a complaint regarding any aspect of service relating to the Site by writing to TIBCO at the address below, sending e-mail to tibcommunity@tibco.com or calling (877) 724-8227. Upon your request, you may have these Terms sent to you by e-mail.

23. How to Contact TIBCO: Email: tibcommunity@tibco.com
Phone: (877) 724-8227
U.S. Mail: TIBCO Software Inc.
3303 Hillview Avenue
Palo Alto, CA 94303

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VBrick Systems, Inc.
12 Beaumont Road
Wallingford, CT 06492

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

1. **Scope.** This Rider and the attached VBrick Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - 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**

VBRICK SYSTEMS, INC.

VBRICK SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

GRANT OF LICENSE

The Software Product is being licensed, not sold, to Ordering Activity. In accordance with and subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a personal, non-transferable, non-exclusive license to use the object code version of the Software Product and Documentation. All rights and title in and to the Software Product and Documentation and all derivative works thereof (as such term is defined by the United States Copyright Act (as amended) at Title 17 U.S.C. and in accordance with FAR 52.227-19), including without limitation copyrights and trade secret rights, belong to Contractor and/or its partners, licensors and suppliers (collectively, "Suppliers"), and Contractor and its Suppliers hold title to each copy of the Software Product and Documentation, and any portion thereof. Contractor and its Suppliers reserve all rights to the Software Product and Documentation not expressly granted to Ordering Activity herein. This Attachment A grants Ordering Activity the following rights:

Software Product. Ordering Activity may install and use one copy of the Software Product, or any prior version for the same operating system, only on the number of computers and users for which the license is given pursuant to Ordering Activity's Purchase Order. In addition, Ordering Activity may make a copy of the Software Product for backup purposes at no cost. Except as expressly provided herein, Ordering Activity may not copy, nor encourage or allow copying of, the Software Product or Documentation. Ordering Activity may not cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination or other distribution of the Software Product or the Documentation by any means or in any form without Contractor's prior written consent.

Storage/Network Use. Ordering Activity may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product on Ordering Activity's other computers over an internal network; however, Ordering Activity must acquire either a Single User License for each separate computer on which the Software Product is installed or run from the storage device, or a Single Building License or an Enterprise License (defined below). If Ordering Activity has acquired appropriate licenses to allow installation of the Software Product on a computer file server within Ordering Activity's internal network Ordering Activity may also use such server to push firmware updates to other VBrick products. No server or network use of the Software Product is permitted except the uses expressly permitted in this Attachment A.

Single User License. Ordering Activity may use the Software Product on one computer only, or must have a license for each computer on which the Software Product is installed. A Single User License for the Software Product may not be shared or used concurrently on different computers or by separate users unless otherwise specified in Ordering Activity's Purchase Order.

Connection License. Ordering Activity is granted license to interconnect a single external server to Ordering Activity's VBrick Server Software; additional connections require purchase of additional connection licenses.

No Modification. Ordering Activity may not alter or modify the Software Product or create a new installer for the Software Product. The Software Product is licensed and distributed for viewing, distributing, and sharing media files. Ordering Activity is not authorized to integrate or use the Software Product with any software except software authorized by Contractor.

Automatic Connection. THE SOFTWARE PRODUCT MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE ORDERING ACTIVITY'S COMPUTER TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE PRODUCT MAY TRANSMIT ORDERING ACTIVITY'S SERIAL NUMBER TO CONTRACTOR OR ITS SUPPLIERS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE THAT ARE NOT PERMITTED.

Third-Party Website Access. The Software Product may allow Ordering Activity to access third-party websites ("Third-Party Sites"). Ordering Activity's access to and use of any Third-Party Sites, including but not limited to any goods, services, or information made available for such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third-Party Sites are not owned or operated by Contractor or its Suppliers. ORDERING ACTIVITY'S USE OF THIRD-PARTY SITES IS AT ORDERING ACTIVITY'S OWN RISK. NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS, OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE THIRD-PARTY SITES.

Compliance With Licenses. If Ordering Activity is an entity, Ordering Activity agree that upon request from Contractor or Contractor's authorized representative, Ordering Activity will within thirty (30) days fully document and certify that use of any and all Software Products at the time of the request is in conformity with Ordering Activity's valid license(s) from Contractor and/or its Suppliers.

OTHER RIGHTS AND LIMITATIONS

Limitations on Reverse Engineering, Decompilation, and Disassembly. Ordering Activity may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Ordering Activity may not use the Software Product to conduct a service bureau or similar business for the benefit of third parties. Ordering Activity may not modify, adapt, translate, or otherwise create derivative works based on the Software Product or Documentation.

Separation of Components. The Software Product is licensed as a single product. Its component parts may not be separated for use on more than one computer beyond the licensed number of users. If the Software Product is an upgrade or a revision of a component of a package of software programs that Ordering Activity licensed as a single product, the Software Product may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

Dual Media Software. Ordering Activity may receive the Software Product in more than one medium. Regardless of the type or size of medium Ordering Activity receive, Ordering Activity may use only one medium that is appropriate for the computer or computers for which the license is given (pursuant to the Purchase Order). Ordering Activity may not use or install the other medium on another computer. Ordering Activity may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided below) of the Software Product.

Support Services. Contractor through VBrick may or may not provide Ordering Activity with support services related to the Software Product ("Support Services"). Any supplemental software code provided to Ordering Activity as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Attachment A. With respect to any technical information Ordering Activity may provide as part of the Support Services, Contractor through VBrick may use such information for its business purposes, including but not limited to product support and development.

COPYRIGHT

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), the Documentation or other accompanying printed materials, and any copies of them are owned and retained by Contractor and/or its Suppliers. Copyright laws and international treaty provisions protect the Software Product. Therefore, Ordering Activity must treat the Software Product like any other copyrighted material, except that Ordering Activity may install a copy of the Software Product on a single computer, storage device or as otherwise provided in this Attachment A, provided that Ordering Activity keep the original solely for backup or archival purposes. Ordering Activity may not copy the printed materials accompanying the Software Product.

U.S. GOVERNMENT RESTRICTED RIGHTS

The Software Product and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, or RESTRICTED RIGHTS notice per 52.227-14 as applicable. Manufacturer is VBrick Systems, Inc. 12 Beaumont Road, Wallingford, CT 06492 USA.

LIMITED WARRANTY

THE SOFTWARE PRODUCT AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCT'S OR THE DOCUMENTATION'S TITLE, NONINFRINGEMENT OF THIRD PARTY'S RIGHTS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER CONTRACTOR NOR ITS SUPPLIERS WARRANT THAT THE SOFTWARE PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT IT MEETS ORDERING ACTIVITY'S REQUIREMENTS, OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR HARDWARE.

THE ENTIRE RISK AS TO THE USE, QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCT AND DOCUMENTATION IS WITH ORDERING ACTIVITY. NEITHER CONTRACTOR NOR ITS SUPPLIERS IS OBLIGATED TO PROVIDE ANY SUPPORT SERVICES TO ORDERING ACTIVITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF ALL WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

EXHIBIT A – VBRICK WARRANTY AND SUPPORT

THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

PRODUCTS OR PARTS WHICH ARE SAMPLES OR PROTOTYPES ARE SOLD “AS IS” “WHERE IS” WITH ALL FAULTS, *i.e.* WITHOUT ANY WARRANTY WHATSOEVER.

WHEN SUBMITTING AN ORDER FOR SOFTWARE MAINTENANCE (REFERRED TO THROUGHOUT THIS DOCUMENT AS SUPPORT SERVICES) ORDERING ACTIVITY MUST CERTIFY THAT ORDERING ACTIVITY HAS READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE FOLLOWING ATTACHMENT A TERMS AND CONDITIONS. ADDITIONALLY, IF ORDERING ACTIVITY IS ACTING AS AN EMPLOYEE OR AGENT OF THE ORDERING ACTIVITY FOR THE VBRICK PRODUCT FOR WHICH SOFTWARE SUPPORT SERVICES ARE TO BE PROVIDED, ORDERING ACTIVITY FURTHER CERTIFY THAT ORDERING ACTIVITY HAS FULL LEGAL AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS ATTACHMENT A ON BEHALF OF THE ORDERING ACTIVITY.

DO NOT SUBMIT ORDERING ACTIVITY’S ORDER UNTIL ORDERING ACTIVITY HAS CAREFULLY READ, UNDERSTOOD AND AGREED TO THESE ATTACHMENT A TERMS AND CONDITIONS. IF ORDERING ACTIVITY DOES NOT AGREE TO THESE ATTACHMENT A TERMS AND CONDITIONS, OR IF ORDERING ACTIVITY DOES NOT HAVE LEGAL AUTHORITY TO ACCEPT THEM ON BEHALF OF THE ORDERING ACTIVITY, CONTRACTOR WILL NOT ACCEPT ORDERING ACTIVITY’S ORDER.

THE CHART BELOW IS A SUMMARY OF THE WARRANTY TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR’S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR’S LIMITED WARRANTY ARE AS SET ONWARD BELOW.

VBrick Maintenance Services Offerings	Gold Program	Gold Plus Program	Platinum Program
• Hardware Warranty. Standard RMA (guarantee five-day turnaround after receipt)	Yes	Yes	Yes
• Hardware Warranty. Next day RMA			Yes
• Minor Software releases and patches	Yes	Yes	Yes
• Major Software releases		Yes	Yes
• E-mail/Phone Support (Response within 24 business hours)	Yes	Yes	
• E-mail/Phone Support (Response within 4 business hours)			Yes
• Level 3 Telephone Support 8:30 – 7 pm (Monday to Thursday)	Yes	Yes	Yes
• Level 3 Telephone Support 8:30 – 5:30 (Friday)			
• Level 1, 2 Telephone Support 8:30 – 7 pm (Monday to Thursday)			Yes
• Level 1, 2 Telephone Support 8:30 – 5:30 (Friday)			
• After hours priority number (Level 3 only. 4 hour response time)			Yes
• Web-Based Knowledgebase	Yes	Yes	Yes
• Onsite Support (Level 3 only)			Yes*

I. PRODUCTS COVERED.

Contractor warrants to Ordering Activity the VBrick Software and Manufactured Equipment, including hardware, software and firmware (the “Equipment”): (i) to be free from defects in material and workmanship under normal use and service, and (ii) to conform in all material respects to the printed specifications for the Equipment which have been delivered to Ordering Activity in connection with Ordering Activity’s purchase of the Equipment.

Provision of Software Maintenance Software Support Services by Contractor through VBrick are conditioned upon Ordering Activity having deployed the current shipping release of the respective VBrick Product for which such Software Support Services are to be provided*. Only these Attachment A terms and conditions, notwithstanding any preprinted or other terms and conditions on Ordering Activity’s Purchase Order shall govern Ordering Activity’s purchase and Contractor’s provision of Software Support Services.

*Upgrades to the latest version will be provided free of charge according to the program purchased by the Ordering Activity. Contractor does not guarantee it can support versions of software other than the current shipping release.

II. LENGTH OF WARRANTY.

Warranty and Software Maintenance shall commence upon the date indicated in the Contractor confirmation notice and shall continue in full force and effect for a period of one (1) year. Ordering Activity may, at the time of your initial order, purchase up to five (5) years of Subscription Service. Contractor will provide Ordering Activity with no less than thirty (30) days prior written notice of any pending Software Subscription Service changes with details on any pricing and/or modifications to these Attachment A terms and condition.

III. WHO OR WHAT IS COVERED?

This Limited Warranty covers only the VBrick Software and VBrick Manufactured Equipment acquired by the original Ordering Activity.

IV. EXCLUSIONS.

This warranty shall be void if the Ordering Activity fails to use or maintain the Software or Equipment in accordance with Contractor's specifications or instructions, or if the Software or Equipment or any part thereof has been subject to any unauthorized modifications, improper operation, user negligence, service by an unauthorized person, company or association, use with any unauthorized attachment, device or feature, accident neglect, misuse, tampering, acts of God, or any event other than ordinary use.

The following points are not included in Contractor's Limited Warranty and Gold and Platinum programs

- Support on any product not manufactured or produced by VBrick
- Professional services:
 - Integration with 3rd party equipment,
 - Installation support for new VBrick equipment
 - Contractor through VBrick Technical Support Services personnel performing or providing over the phone a step by step upgrade of the Equipment.
 - Support Services related to the relocation of VBrick equipment or the elimination or addition of new VBrick equipment or third party equipment, such as network equipment, audio and video devices, or custom software applications or programs.
 - Feasibility Studies
 - Equipment Upgrades/Updates that also require hardware upgrades in order to utilize new functionality of the software. Any such hardware upgrades is not covered. Ordering Activity may purchase the hardware upgrades at the price set forth in the latest-current Contractor GSA Price List.

V. LIMITATION OF LIABILITY.

Contractor's obligation and Ordering Activity's remedy for any failure of the Equipment is limited to the repair or replacement of any part of the Software and/or Equipment at Contractor's discretion, which examination shall disclose to Contractor as defective. Contractor reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the Equipment. Nothing herein shall obligate Contractor to make such a refund.

Software Updates and Upgrades: If Contractor, in its discretion, creates Software Updates or Software Upgrades to the VBrick Product during the term for which Ordering Activity has purchased Software Support Services, Contractor shall provide all such Software Updates and Software Upgrades to Ordering Activity designated technical contact. Distribution of Software Updates or Software Upgrades does not include installation by Contractor. Contractor will provide Ordering Activity with all such Software Update or Software Upgrades when Contractor makes them available to its general customer base for the VBrick Product. All Software and related materials provided pursuant to Software Support Services, including documentation and program materials are subject to these Attachment A terms and conditions for the VBrick Product.

VI. HOW TO OBTAIN WARRANTY SERVICE.

To receive warranty services, Ordering Activity must register equipment under their name upon arrival at <http://registration.vbrick.com>, or via mail to:

Technical Support Services – Registration Department
12 Beaumont Rd
Wallingford, CT 06492

Ordering Activity must notify Contractor through VBrick promptly by telephone, and/or via our website of any alleged defect with the Equipment or software, including a detailed description of such alleged defect. For warranty verification purposes, the Ordering Activity must furnish VBrick Technical Support Services with the equipment serial number or warranty contract number. Failure to provide this number may delay service response time or require payment for services. VBrick's telephone number for warranty service is (203) 303-0222. VBrick's support website is located at <http://www.vbrick.com/support>. Upon notifying VBrick of an alleged defect with the Equipment and after defect has been verified by VBrick's Technical Support Services, Ordering Activity agrees not to use the Equipment until further notice by VBrick. Ordering Activity shall bear all risks of operation, if Ordering Activity operates the Equipment prior to VBrick's determination that the Equipment is suitable for operation, and VBrick shall bear no liability whatsoever for any damages, losses or claims that may arise due to such operation.

Upon notification of a possible defect and after defect has been verified by VBrick's Technical Support Services, Contractor through VBrick will provide to customer a Return Merchandise Authorization ("RMA").

Technical Customer Support is available via telephone at (203) 303-0222, email: support@vbrick.com, or website: <http://www.vbrick.com/support>, from 8:30 AM to 7:00 PM Monday to Thursday and 8:30 AM to 5:30 PM Friday (U.S. Eastern Time).

Priority will be given to Ordering Activities who have purchased Extended Warranty / Maintenance Program. Expected response time for Gold products is 24 business hrs and 4 business hrs for Platinum products.

VII RETURN MATERIAL AUTHORIZATION (RMA)

All equipment under abnormal operation must be verified by a VBrick Technical Customer Support representative before it is assigned a Return Material Authorization (RMA) number. If Ordering Activity elects to avoid the verification process, a PO for

VBrick's in-house diagnostics fee (consult latest GSA price list for diagnostics fee charges) will be required. If equipment is deemed faulty, diagnostic fees will be void.

Replacement equipment will not be shipped without an RMA number assigned. All Equipment received by Contractor through VBrick without an RMA number will be returned to the Ordering Activity without being repaired. Ordering Activities must return the Equipment in need of repair with the same serial number as reported in the RMA. If equipment with a different serial number is returned under the RMA, the equipment will be returned without being repaired. Ordering Activity is responsible for properly packing the Equipment before it is shipped to Contractor through VBrick.

If Contractor through VBrick determines that the defect was not caused by accident, improper use, abuse, neglect, unauthorized alteration or service, inconsistent use with the specifications or any use other than ordinary use, VBrick shall, at its option, repair or replace the applicable part(s) of the Equipment within the limits of the program in which the Equipment is enrolled, and at VBrick's expense, return the Equipment to the Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Next Day Shipment: ensures that a replacement for defective Equipment will be shipped to the Ordering Activity before requiring the Ordering Activity to return the defective Equipment to Contractor through VBrick. Equipment will be shipped to arrive at Ordering Activity's site the next business day after dispatch. However, any requests for replacement Equipment processed in North America after 3:00 PM Eastern Time (ET) may ship the following business day for second business day delivery. Any international requests for replacement processed after 3:00 PM ET may ship the following business day for international delivery. Delivery times depend upon each country customs regulations. Contractor through VBrick is not responsible for any customs or tax charges related to any country other than the U.S.A. A replacement Equipment may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to VBrick within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Ordering Activity.. Any single request for a single shipment of five (5) or more Equipment of the same type may be subject to delays.

DOA (Dead on arrival): A product can be deemed as DOA, after troubleshooting by Contractor through VBrick Technical Support Services, if it is not fully functioning when it is setup for the first time or received with damage. It does not have to be completely dead or non-functioning to qualify for DOA. It could be anything from a unit not powering up to a unit with a bent connector. If it's not fully functional or has damage when opened and setup for the first time, it qualifies as "DOA" and eligible for a cross ship replacement if within 30 days of the original ship date and registered runtime of the product is not more than 4 days. After 30 days, follow normal RMA process unless Manager of Support Services approves expedited RMA process.

VIII. REPLACEMENT PARTS.

Parts replaced during the Limited Warranty Period, as applicable, will be covered for the remaining term of such period or for thirty (30) days from time of replacement, whatever is longer. Such replacement parts may, at Contractor's option, be new or remanufactured. All parts removed from warranted Equipment shall become property of Contractor.

IX. PLATINUM PROGRAM - EXTENDED WARRANTY / MAINTENANCE -

Ordering Activities may purchase VBrick's Extended Warranty / Maintenance Program (Platinum) for their equipment at any time within thirty (30) days from the date indicated in the VBrick confirmation notice -and for additional 1 year incremental periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program").

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and major software releases.

X. GOLD and GOLD PLUS PROGRAMS - EXTENDED WARRANTY / MAINTENANCE -

Contractor through VBrick's Limited Warranty Gold Program is in effect for one (1) year from the date indicated in the VBrick confirmation notice -and for additional periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program"). Periods must be consecutive one to each other. Ordering Activity shall not be allowed to renew the program for their Equipment and/or Software in the case the program period expired for the Equipment and/or Software in question and Ordering Activity missed to renew between 30 days of renewal due date.

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and minor software releases.

XI. SOFTWARE COVERAGE

Software: means all computer programming code, entirely in binary form, which is directly executable by a computer and includes those computer programs which have been licensed to Ordering Activity either as a separate product or as part of another VBrick Product.

Software coverage includes the following:

- Major Software Release (Software Upgrade): initial or new version of a software product or application. It means a version of the Software as classified by Contractor through VBrick which has been enhanced, improved and/or modified and replaces the existing version of the Software. This includes any minor software releases, user interface changes,

usability changes, and new features and functions. As an example a major release is denoted by a version change from 2.0 to 3.0

- Minor Software Release (Software Update): piece of software designed to correct discovered deficiencies and/or bugs affecting performance to the software description, program or its supporting data. This includes improved performance, bugs fixes, or graphics replacement. As an example a minor releases is denoted by version changing from 2.0 to 2.1.
- Software upgrades during the Extended Warranty/Maintenance Program period. The upgrades will be provided to the Ordering Activity via CD-ROM or VBrick's website. The Ordering Activity is required to perform the upgrade.
- Software upgrades may not include upgrades that require disassembly of the Equipment.

XII. HARDWARE COVERAGE

Hardware coverage includes the following:

- Repair or replacement of defective Equipment during Warranty Program period.
- Firmware upgrades (upgrades of code that require disassembly of Equipment).

XIII. TECHNICAL SUPPORT SERVICES

The following is an explanation of services performed at each level:

- Level 1: provide answers and helpdesk for Equipment features. Basically all the "what" questions. This information can be found in the Equipment Documentation.
- Level 2: diagnose and troubleshoot complex network problems including multicast issues. Diagnose and troubleshoot Server software related problems. Provide answers on how to perform upgrades. Basically able to answer the entire "how" questions. This information can be found in the Equipment documentation and in training materials.
- Level 3: diagnose and troubleshoot "error and abnormal Equipment behaviors".

Onsite Support: When a problem cannot be resolved by utilizing remote technical support, Contractor through VBrick will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Ordering Activity. VBrick will not be held responsible for delays in the delivery of the services due to Ordering Activity's stoppage to provide access to Ordering Activity's facilities or due to security requirements. Contractor through VBrick may comply with all Ordering Activity imposed security requirements.

The Extended Warranty/Maintenance Program is obtained in the manner outlined in Part IX, X above and is limited as provided in the introduction and Parts III, IV, V, VII, VII and XI, XII, XIII above.

XIV. PRODUCTS OUT OF WARRANTY RE-JOINING A WARRANTY PROGRAM

- No product can be renew under the old warranty program except for products from Ordering Activity and only until the new GSA pricing becomes effective.
- If warranty coverage has lapsed, there can be NO Hardware repair claim made for a minimum of 60 days after the renewal. If a claim is made within the first 60 days - it will be billed to the Ordering Activity at then-current GSA repair rate.

XV. REPAIR SERVICE OUTSIDE WARRANTY OR MAINTENANCE PROGRAM POLICY.

In the event that Equipment requires service that is not covered by Contractor's Limited Warranty or any other Program, Equipment may be shipped to Contractor through VBrick for repair. Ordering Activity must notify VBrick's Technical Customer Support of the problem via telephone at (203) 303-0222, or via website at <http://www.vbrick.com/support>, obtain a RMA and ship the Equipment to VBrick, at Ordering Activity's expense. Repairs are performed under flat fee charges (please refers to latest Contractor's GSA price list for charges). Contractor through VBrick will repair the Equipment within five (5) business days from the date the equipment is delivered at VBrick's facilities and will, at VBrick's expense, return the Equipment to Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Limited Services Warranty. THE PROVISION OF SOFTWARE SUPPORT SERVICES DOES NOT EXTEND, MODIFY OR ENHANCE THE ORIGINAL SOFTWARE WARRANTIES, IF ANY, FOR THE VBRICK PRODUCT (S). CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT SERVICE(S) PROVIDED HEREUNDER.

**ATTACHMENT B
GOVERNMENT PRICE LIST**

INSTRUCTIONS:

To view the Government Price List for this contract, please follow the below URL:

www.ecamerica.com

Then select the URL for GS-35F-0511T, and then the specific manufacturer. The Government Price List for that manufacturer is found under the "Contract Vehicles, Pricelists & Terms" section.